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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. LUIS ALBERTO GOMEZ, Defendant and Appellant.	B246572 (Los Angeles County Super. Ct. No. VA102759)

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

Sharon M. Jones, 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, Linda C. Johnson and Michael Katz, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Luis Alberto Gomez appeals from a judgment and sentence, following his conviction for first degree murder and unlawful driving or taking of a motor vehicle. Appellant contends the trial court erred in denying a motion to suppress his confession, after the court determined that appellant's waiver of *Miranda*[1] rights was knowingly, voluntarily and intelligently made. Finding no reversible error, we affirm.

PROCEDURAL HISTORY

Appellant was charged by information with first degree murder (Pen. Code, § 187, subd. (a); count 1),[2] and unlawful driving or taking of a motor vehicle (Veh. Code, §10851, sub. (a); count 2). As to the murder, it was further alleged that appellant personally used a knife, a deadly weapon within the meaning of section 12022, subdivision (b). Finally, the information alleged the special circumstances of torture and lying in wait, within the meaning of section 190.2, subdivision (a)(15) and (18).

Before trial, defense counsel filed a motion to suppress appellant's confession, arguing it was obtained in violation of *Miranda*. After holding an Evidence Code section 402 hearing, the trial court denied the motion to suppress. The court found that appellant "knowingly, voluntarily, and intelligently waived his rights."

A jury convicted appellant on both counts, and found true the weapon enhancement allegation. The jury also found true the special circumstance that

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[1] *Miranda v. Arizona* (1966) 384 U.S. 436.

[2] All further statutory citations are to the Penal Code, unless otherwise stated.

appellant killed the victim by means of lying in wait, but found not true that appellant inflicted torture on the victim.[3]

The court sentenced appellant to prison for a term of 25 years to life on the murder conviction, and 16 months concurrent on the Vehicle Code violation. Appellant filed a timely notice of appeal.

EVIDENCE AT TRIAL

A. *The Prosecution Case*

According to the prosecution, appellant, who was in a relationship with the victim, killed the victim out of jealousy at being jilted. On September 18, 2007, appellant lured the victim to a remote area of Bloomfield Park, had sex with him, tied him up, and stabbed him 60 times. After killing the victim, appellant took his vehicle, his cell phone and other personal belongings.

Los Angeles County Sheriff's Deputy Scott T. Terry testified that on September 19, 2007, he responded to a report of a dead body in Bloomfield Park. At the location, Deputy Terry saw the body of the victim, Tomas Vargas-Ramirez. Vargas-Ramirez was on his back, his legs spread-eagled, his hands and arms extended above his chest, and held in place with a knotted long-sleeved shirt. The bottom of the front of the shirt was pulled over the victim's head. He was wearing

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[3] The trial court struck the deadly weapon enhancement, and determined that a sentence of life imprisonment without the possibility of parole (LWOP) under section 190.5 was unconstitutional, as appellant was a juvenile at the time he committed the murder. As the sentence imposed falls within the court's discretion under section 190.5 and the People do not challenge the propriety of the sentence, we decline to address whether the court's constitutional analysis was correct. (Cf. *Bell v. Uribe* (9th Cir. 2013) 729 F.3d 1052, 1064 [LWOP sentence under section 190.5 not unconstitutional as statute permits court discretion to impose a sentence of LWOP or 25 years to life].)

underwear and a pair of socks, and there was a condom on his penis. A belt and a pair of pants were found nearby, but no weapon was located.

Dr. Ajay Panchal, a deputy medical examiner with the Los Angeles County Coroner's Office, testified that the victim was five feet tall and weighed 121 pounds. There were 60 stab wounds on the victim's body. Dr. Panchal opined that the victim suffered a number of these wounds when he was still alive, conscious, awake, and aware. Seven of the wounds were fatal. The cause of death was "multiple sharp force injuries and [it was] . . . a homicide."

Lori Schumann, a senior criminalist with the Los Angeles County Sheriff's Department's crime lab, testified she analyzed DNA extracted from forensic swabs taken from the victim's penis and the condom. The analysis showed a mixture of DNA from two contributors. The DNA profiles extracted were consistent with appellant's and the victim's DNA profiles.

The victim's wife, Concepcion Martinez, testified that he was not a violent or controlling man. According to Martinez, her husband owned two vehicles, including a black Range Rover. He also carried a burgundy cell phone. On one occasion, she overheard her husband on his cell phone, asking "Where are you?" The person responded that he was "with Deborah."

As was his normal routine, on the morning of September 18, 2007, her husband drove Martinez to her work in his Range Rover. At around 5:00 p.m., however, he did not pick her up at work. Martinez called him, and he responded that he had to work a little longer. Martinez told him she would take the bus home, and he told her that he would meet her at home. When he failed to show up, she became worried. She called his cell phone repeatedly, but got only his voice mail. Martinez continued calling the cell phone. About two days after her husband disappeared, a person answered the phone. "This person told me that [my

husband] was not going to return" because he "didn't love me anymore and that he was going to stay with [this person]."

Laura Pescador, appellant's former friend, testified she had known him for about five years before the homicide. Appellant was "very outgoing." Pescador saw him about three or four times a week; most of those times, appellant was "very happy." Pescador knew appellant was gay; he never hid his sexual preference from her. Appellant never told Pescador that anyone sexually assaulted or raped him, that "he wanted anybody killed," or that he heard voices.

Pescador never got the impression that anyone controlled appellant, or told him how he should dress. Appellant never complained to her that he was in a relationship with a person who was too controlling. Rather, she thought that in appellant's relationship, "maybe he was the one that was in control." She never saw any bruises or injuries on appellant's body.

In late September 2007, appellant came to Pescador's house with a black Range Rover. Appellant said the vehicle belonged to his boyfriend. During this time period, appellant "seemed okay," and was "joking around." "[H]e didn't look like . . . something was bugging him." One time when Pescador, another friend, and appellant were in the Range Rover, appellant "said there was a dead body . . . in the trunk . . . ." After the friend "freaked out," appellant winked at Pescador, smirked, and said, "'It's just a joke.'"

Around this time, appellant also began carrying a red cell phone, which he told Pescador belonged to his boyfriend. When Pescador was with appellant, the cell phone rang repeatedly and appellant failed to answer it "most of the time." One time, because the ringing annoyed her, Pescador told appellant to answer the phone, and she opened the phone. Appellant took the phone, and appeared to be speaking to a woman. Appellant's tone of voice was angry. He "just said . . . for

her to stop calling because the guy that she was asking for . . . no longer want[ed] to be with her, that he ha[d] a different lifestyle, and he's going to be with [appellant]."

When appellant went to the restroom, the phone rang again, and Pescador answered. The woman who had called "sounded very nervous, like desperate." "She want[ed] to know where her husband [was] because she ha[d] two kids and one of them was really sick." "I told her I am very sorry for what's going on with her, but I don't know who Tomas is, but I will sure tell [appellant] . . . to call you . . . ." Pescador told appellant about the woman's phone call, but appellant told Pescador "just discard it." They did not discuss the phone call again. However, the cell phone continued to ring "most of the time. She kept calling and calling and calling."

Jesus Moreno, also known as "Chuy," testified that he and appellant became friends sometime in 2006. They spent five hours a day together, two to three times a week. They did not have a romantic or sexual relationship. Moreno, who is gay, dressed as a woman and wore makeup, and used the name Deborah. Appellant was insecure about his physical appearance; he wanted to "look more feminine . . . and he wanted to look like [Moreno]." Moreno taught appellant how to dress like a woman and apply women's makeup.

When appellant first met Moreno, appellant did not mention that he had a boyfriend. Later in 2006 or in 2007, appellant stated that his boyfriend was named Tomas. Moreno met Tomas in July or August 2007, when appellant brought Tomas to Moreno's apartment. It appeared to Moreno that appellant was the dominant person in the relationship appellant had with Tomas. Moreno never saw appellant with any bruises or injuries. Appellant never complained to Moreno that he heard voices, and Moreno never saw appellant depressed.

Moreno knew that appellant cheated on Tomas because appellant told Moreno about it. Appellant would meet other men on the street and eventually have sex with them. According to Moreno, appellant never said that he was uncomfortable or scared having sex. Appellant told Moreno he had been molested in Mexico, but he never stated that he was molested or sexually assaulted in the United States.

When Moreno first met Tomas, he had the impression that Tomas was attracted to him, based on the way that Tomas "looked at" Moreno. Later, although Moreno did not give Tomas his number, Tomas was able to obtain it. Tomas phoned Moreno and sent him text messages. When Moreno pointed out that Tomas was appellant's boyfriend, Tomas replied that "[h]e did not care because [appellant] . . . would mistreat him." Tomas "started sending [Moreno] messages of intimate parts of himself." Tomas also continued to call Moreno. Eventually, Moreno and Tomas "had a regular [phone] conversation two or three times . . . a week over a month's period." They also went out on one date.

Moreno told his roommate, Luis Vera, about the phone calls with Tomas. Vera told appellant, and later, appellant came to Moreno's home. Appellant insulted Moreno, swore at him, and threatened to hit him if he continued to "bother[]" Tomas. Appellant never said that he was going to stab someone. However, appellant once remarked, "how easy it is to kill a person."

Moreno stopped socializing with appellant because appellant "started causing problems . . . due to his insecurity . . . ." Appellant was a jealous person. Appellant asked Moreno why Moreno looked better than him, and "how come you have more friends and I don't have as many friends and no one pays attention to me?" Due to appellant's jealousy, he had an "aggressive, nasty attitude" toward Moreno. Moreno explained that appellant would provoke straight men by hitting

on them. Appellant "would be easily upset." He insulted people and swore at them.

Moreno denied participating in the homicide. The day after the homicide, appellant came to Moreno's home to visit Vera. Appellant was driving the Range Rover, which Moreno recognized as Tomas's vehicle. Appellant did not appear to be depressed. Rather, he appeared to be "happy."

Detective William Marsh, a sergeant with the Los Angeles County Sheriff's Department, testified that he investigated the murder of Vargas-Ramirez. Two weeks after the body was discovered, Detective Marsh received information that pinpointed the location of Vargas-Ramirez's cell phone, based upon its activity. Arriving at the location, later identified as appellant's home, he noticed a black Range Rover outside. Inside the home, he found the victim's cell phone.

Before Detective Marsh conducted an interview of appellant, Los Angeles County Deputy Sheriff Cesar Hinojosa advised appellant of his *Miranda* rights in English. Appellant stated he understood his rights, and proceeded to speak with the detective. Before appellant confessed to killing Vargas-Ramirez, Detective Marsh provided no details about the crime scene. Nevertheless, appellant provided details that only someone present during the murder would have known, including that Vargas-Ramirez wore white socks and black shoes, and that the condom wrapper was red.

The prosecutor played for the jury the audio-recording of appellant's interview, and gave the jury a written transcript of it. In the interview, appellant first tried to shift blame to Moreno, claiming that Chuy gave him the Range Rover and told him to sell it quickly. After initially denying knowing what had happened to Vargas-Ramirez, he admitted, "Okay. I did it. I did this."

Appellant explained that he killed Vargas-Ramirez because Vargas-Ramirez had raped him three years earlier. According to appellant, Vargas-Ramirez thought of appellant as his "property." He expected appellant to quickly respond whenever Vargas-Ramirez called him. Vargas-Ramirez also told appellant that "if I didn't do what he said, something was going . . . to happen to my family." Appellant waited three years before killing Vargas-Ramirez in order to gain his trust. Appellant chose September 18, because it was the anniversary of the rape.

On September 18, appellant and Vargas-Ramirez went to Seal Beach in the evening. Appellant was going to kill Vargas-Ramirez there, but there were too many people. After eating at a burger restaurant, Vargas-Ramirez was going to take appellant home at 11:00 p.m. Appellant suggested that they go to Bloomfield Park instead. Vargas-Ramirez said that he had to go, but appellant replied that he should "wait a while." The two men then drove to the park, and parked the vehicle. They walked to a remote corner of the park that appellant chose "because it was darker there."

Appellant told Tomas that he "felt like playing," which meant he wanted to have sex. Appellant tied Vargas-Ramirez's hands with the victim's shirt, and tied Vargas-Ramirez's feet with the victim's belt. Appellant "touched" Vargas-Ramirez's "stomach" and "member." After removing the victim's pants, appellant put on a condom. Vargas-Ramirez yelled at appellant and told him to "Hurry up and finish what you have to do." Appellant asked, "Oh, you want me to finish what I'm going to do?" Vargas-Ramirez replied, "Yes." "[T]hat's when I did it."

Appellant stabbed Tomas with a knife that appellant bought several days earlier. Appellant threw the knife in a trash bin in the park. Then, he got in Vargas-Ramirez's vehicle and drove away.

After denying that anyone helped him stab the victim, appellant stated that Chuy also stabbed Vargas-Ramirez. Appellant explained that he and Chuy got angry when they discovered the victim was cheating on them by dating both of them at the same time. They planned the homicide two months in advance.

Appellant found out that Vargas-Ramirez was married and had children only after his family called the victim's cell phone the following weeks. He thought Vargas-Ramirez's wife called the cell phone, but he did not remember when she called.

B. *Defense Case*

Appellant testified that he had been raped repeatedly and sexually assaulted by the victim during the three years prior to the murder. Appellant also believed that Vargas-Ramirez would harm appellant's family if he disobeyed him. As a result of the trauma, he had suicidal thoughts and engaged in self-mutilation. Appellant did not tell anyone in any detail about what Vargas-Ramirez had done to him. He was too embarrassed and pretended he was not upset. He did not trust his friend Pescador because she spread gossip.

In mid-2006, appellant started thinking that he "had to do away with" Vargas-Ramirez. However, he denied having a plan to kill Vargas-Ramirez. Rather, "the [day] he died . . . , it came into my head when I got up." Appellant explained that September 18 was "[a] very special day," because "it was the day that [Vargas-Ramirez] had done something to me that I did not like." Appellant heard voices that day, and still heard voices by the time of trial.

Appellant then described how he purchased a knife that morning and murdered the victim that evening. He stated that he recalled stabbing the victim only three times. Appellant denied being jealous or envious of Chuy's looks.

Appellant thought that at some point Vargas-Ramirez became interested in Chuy, but he denied that this made him jealous.

Dr. Nancy Kaser-Boyd, a clinical and forensic psychologist, opined that based upon her two examinations of appellant, he had "severe" post-traumatic stress disorder (PTSD) "with psychotic features." Although Kaser-Boyd had no proof that the events occurred other than appellant's statements, she concluded that appellant's "symptoms that he's reporting and his test results are consistent with the experience of aggravated sexual assault." Kaser-Boyd stated that in order for appellant to fake his symptoms, "[h]e would need to know enough about a trauma disorder and an aggravated trauma disorder to answer the questions in the correct way."

Dr. Deborah Miora, a clinical forensic and neuropsychologist, reviewed various records in this case, and interviewed appellant three times. In her opinion, appellant suffered from PTSD and attention deficit hyperactivity disorder. Miora also opined that appellant was not malingering.

C. *Prosecution's Rebuttal Evidence*

Dr. Hy Malinek, a clinical and forensic psychologist, testified that he met with appellant and conducted some tests with him. He discerned no evidence that appellant was psychotic or confused at the time he confessed to Detective Marsh. Nor did Malinek see evidence that appellant suffered from PTSD. He asserted that Kaser-Boyd improperly relied on results of the tests she administered to appellant, because "the validity checks on the three test[s] of Dr. Kaser-Boyd are invalid."

Malinek stated that the neuropsychological tests Miora gave appellant depended "heavily on verbal skill and education." People with limited education -- like appellant -- often do poorly on these tests. According to Malinek, Miora's tests made appellant look like a five- or six-year-old in terms of mental abilities.

However, appellant "was able to respond to the detectives," he planned and executed the murder "pretty well," and he performed well on a different test Malinek gave him. "[T]his means that [Miora's] results do not adequately reflect [appellant's] verbal comprehension and abilities, and certainly not his executive abilities."

DISCUSSION

A. *Procedural History and Factual Background*

In a pretrial motion, defense counsel sought to exclude appellant's interview with Detective Marsh on the basis that appellant's waiver of his *Miranda* rights was not knowing or intelligent, based on the language barrier and the fact that the *Miranda* advisements later given in Spanish were defective. In considering the motion, the trial court reviewed the transcripts and audio-recordings of Deputy Hinojosa's English-language advisements to appellant and of appellant's subsequent interview with Detective Marsh. The court also held an Evidence Code section 402 hearing, at which both prosecution and defense witnesses testified.

Deputy Hinojosa testified that after detaining appellant, he advised appellant of his *Miranda* rights in English. The transcript of this conversation shows that all of the required advisements were given, and that appellant stated he understood his *Miranda* rights. Later, acting on Detective Marsh's instruction, Deputy Hinojosa re-advised appellant of his *Miranda* rights in Spanish. The deputy translated the English-language *Miranda* advisements, although he paraphrased some of the words.

Alejandro Franco, a certified Spanish interpreter, opined that some of the Spanish-language *Miranda* advisements given by Deputy Hinojosa were nonsensical. For example, Deputy Hinojosa provided an advisement that -- translated back into English -- stated: "You have your rights of having your name

in silence." Appellant's response to this advisement was, "Like how should that be said?" The trial court concluded that the deputy had "botched" the Spanish-language advisements, and that "the purported Spanish advisal of rights is ludicrous."

Detective Marsh spoke with appellant after the *Miranda* advisements were given in English and Spanish. He asked appellant questions primarily in English, and appellant responded primarily in English. When the detective asked appellant questions in Spanish, sometimes he responded in Spanish, and other times in English. Detective Marsh believed that appellant understood all the questions.

Moreno testified he interacted with appellant on a daily basis. Moreno stated that appellant knew English because he had interpreted for Moreno on at least one occasion. Moreno also personally observed appellant speaking in English over the phone on two separate occasions. Appellant also attended an "American school" during the time that Moreno was acquainted with him, and not a "Spanish school."

Miora testified she tested appellant on his mental state and abilities, and prepared a report. She performed her tests in English, and acknowledged that appellant had completed the 10th grade.

According to Miora, as to verbal intellectual abilities, appellant "earned scores that were at the second percentile[,] [a]nd ranged . . . between the first and sixth percentiles," which meant "that anywhere from 94 to 99 percent of peers perform[ed] better than he [did] in those particular areas of cognitive function." As to his "global cognitive function," an overall estimate of IQ, appellant's score was "at the sixth percentile overall." In response to the court's questions, Miora stated that appellant's "verbal skills were at the second percentile. His comprehension was at the second percentile[,] [a]nd his fluid reasoning, which is

nonverbal problem solving, was at the seventh percentile. . . ." Appellant's "concept formation was at the fifth percentile[,] [a]nd his general information [was] at the first percentile."

The court asked how appellant could be in the second percentile ranking in verbal skills when Miora's own report stated that appellant "appears to understand and express himself well, because he is highly verbal." Miora explained, "The difference is . . . the capacity to talk, to chat, to say a lot of things, is different from -- but could be consistent with the capacity to understand what is being asked . . . and being able to speak at a higher conceptual level."

The court asked Miora about appellant's executive or decisionmaking function. The court noted that appellant confessed that he planned the homicide for three years, and "he scheduled it on the anniversary date of . . . when this thing was done to him." Also, appellant delayed the homicide, "to gain [the victim's] trust." Miora replied that appellant "is not a mentally retarded or intellectually disabled individual. There are areas in which he functions at an average level. And there are areas where he has greater difficulty, absolutely . . . . There were some kinds of problem solving tasks that he did quite well."

After hearing the parties' arguments, the court denied the defense motion to exclude appellant's confession under the totality of the circumstances. The court noted that the audio-recordings showed no hesitation on appellant's part in understanding or answering questions, and no pronounced accent. "He does not speak English as someone who is struggling to pronounce." The court also credited Moreno's testimony that appellant spoke English "well enough to have acted as a translator for Mr. Moreno . . . ."

The court further noted that when Deputy Hinojosa gave the English-language *Miranda* advisements, appellant "answered appropriately. There was no

difficulty in understanding." Moreover, when Deputy Hinojosa asked the "absurd question" in Spanish about "your name in silence," appellant was "intelligent enough to say 'Like how should that be said?' In other words, ['']you're talking garbage, man. I know it. I know you're talking nonsense. I answered it in English before, now you're giving me something that makes no sense['] . . . ." The court determined that appellant knew that Deputy Hinojosa was speaking "gibberish." As the court observed, "[w]hen asked the questions in English [appellant] answers appropriately without any hesitation, without any confusion. He is confused [after being asked the 'absurd question'] because it's utterly confusing, what he's being told at this point."

Finally, the trial court discredited Miora's findings: "I find it extremely difficult to understand how someone who tests in the one to five percentile range can speak coherently, let alone in two languages. She can talk to her heart's content about these various categories of intellectual functioning. I simply cannot reconcile her test results with what I hear [appellant] saying and what I read [him] saying in this report and the information I have from Mr. Moreno's testimony." The court further stated:

"[A]s far as the defendant's global cognitive functioning, I cannot conceivably find factually that what I hear and what I read, especially with respect to his . . . having been raped by the decedent he had nurtured this desire for revenge for three years and planned to avail himself of it on his birthday, the anniversary of this atrocity being visited upon him, that he plans ahead to lure the victim out, . . . -- the whole process is absolutely irreconcilable with the portrait that is portrayed by Dr. Miora. There's no question he has the capacity to plan, execute . . . because he had to gain his trust in order to execute the plan."

Accordingly, under the totality of the circumstances, the court found that appellant "knowingly, voluntarily, and intelligently waived his rights."

B. *Standard of Review*

In reviewing a trial court's ruling on a motion to suppress, an appellate court applies two different standards of review. The reviewing court defers to the trial court's findings of fact, both express and implied, if supported by substantial evidence. The reviewing court then independently applies the pertinent legal principles to those facts to determine whether the motion should have been granted. (*People v. Carter* (2005) 36 Cal.4th 1114, 1140.)

Under *Miranda*, statements obtained during custodial interrogation may be used at trial only if the defendant has been given certain advisements. (*Miranda, supra*, 384 U.S. at p. 444.) Once a suspect receives the advisements, he "is free to exercise his own volition in deciding whether or not to make a statement to the authorities." (*Oregon v. Elstad* (1985) 470 U.S. 298, 308.) A waiver of *Miranda* rights may be express or implied from the totality of circumstances, including the suspect's actions and words. (*Berghuis v. Thompkins* (2010) 560 U.S. 370, 383-388; *People v. Whitson* (1998) 17 Cal.4th 229, 244-250.)

C. Analysis

It is undisputed that the Spanish-language *Miranda* advisements were defective. The trial court recognized this. On the other hand, the English-language advisements were proper. After being advised in English, appellant expressly claimed to have understood his *Miranda* rights and began to speak with Detective Marsh. (See, e.g., *People v. Rios* (2009) 179 Cal.App.4th 491, 499 [implied waiver of *Miranda* rights found where officer provided *Miranda* advisements, defendant claimed to understand them and defendant began answering questions].) The trial court found that under the totality of the circumstances, appellant's

implied waiver was knowing, voluntary, and intelligently made. We conclude that substantial evidence in the record supports the trial court's factual findings, and independently determine that appellant's waiver was valid.

Appellant contends that the "unique combination" of his low intellect, psychological impairment, youth, inexperience with the legal system, and language deficiency rendered his waiver invalid. As to appellant's purported low intellect, psychological impairment and youth, "'a confession is not rendered inadmissible . . . by a low emotional and mental stability on the part of the suspect if he is nevertheless capable of understanding the meaning and effect of his confession.'" (*People v. Lara* (1967) 67 Cal.2d 365, disapproved on other grounds in *People v. Mutch* (1971) 4 Cal.3d 389, 393.) Moreover, the evidence showed that appellant had completed the 10th grade, and that he had sufficient mental capacity to plan and carry out the killing of the victim three years to the day after he was allegedly assaulted. The trial court was entitled to discredit Miora's opinion about appellant's intellectual capabilities and psychological impairment based on its own consideration of the evidence and Moreno's testimony. There was ample evidence to support the trial court's determination that appellant had the mental capacity to plan and execute a homicide.

As to appellant's language deficiency, the trial court determined that appellant could speak English and, more importantly, that he had no difficulty understanding English. The evidence showed appellant knew enough English to translate for Moreno, and to speak in English with others over the telephone. In addition, the transcript of Deputy Hinojosa's advisements in English and the transcript of the interview with Detective Marsh showed no hesitancy on appellant's part in answering English-language questions. Finally, the trial court heard the audio-recordings, and found that appellant had no pronounced accent or

other difficulty in speaking English. On this record, substantial evidence supported the trial court's findings that appellant understood the English-language *Miranda* advisements, that he had the mental capacity to intelligently waive his *Miranda* rights, and that he voluntarily did so. As the record shows appellant waived his *Miranda* rights voluntarily, knowingly and intelligently, we conclude that the trial court did not err in denying appellant's motion to suppress his confession.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

MANELLA, J.

We concur:

WILLHITE, Acting P. J.

EDMON, J.*

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