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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 EIGHT

THE PEOPLE, Plaintiff and Respondent, v. ROLDOLFO LOPEZ, Defendant and Appellant.	B283869 (Los Angeles County Super. Ct. No. BA361170)

APPEAL from the judgment of the Superior Court of Los Angeles County. Craig Richman, Judge. Affirmed.

Jonathan E. Demson, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Paul Roadarmel, Jr. and Kristen J. Inberg, Deputy Attorneys General, for Plaintiff and Respondent.

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Defendant and appellant Roldolfo Lopez appeals from his conviction by jury of two counts of first degree murder, with a multiple-murder special-circumstance finding. Defendant was sentenced to two consecutive terms of life without the possibility of parole. He contends a new trial is warranted because the trial court prejudicially erred in denying his motion to suppress his pretrial statement to police, and in responding to questions from the jury during deliberations.

We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On August 9, 2010, 71-year-old Jack Bezner and his 63-year-old wife Susan[1] were found stabbed to death in the bedroom of their home. Two days later, defendant and Sophia C., the Bezners' 14-year-old granddaughter, were detained in Texas driving the Bezners' car. Defendant made an incriminating statement to law enforcement and both he and Sophia were transported back to California.

Defendant was charged by information with two counts of first degree murder, as well as a multiple-murder special-circumstance allegation.[2] (Pen. Code, § 187, subd. (a), § 190.2, subd. (a)(3).) It was further alleged defendant personally used a knife in the commission of the offenses (§ 12022, subd. (b)(1)), and

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1 We refer to members of the Bezner family by their first names for clarity.

2 Sophia was also charged but was tried separately and is not a party to this appeal.

inflicted great bodily injury upon victims over 60 years of age (§ 1203.09, subd. (a)).[3]

1. Defendant's Recorded Pretrial Statement

After being detained, defendant was interviewed by Detective Phillip Guzman and his partner, Detective John Duncan, of the Los Angeles County Sheriff's Department. The interview was recorded.

The detectives began the interview by asking defendant several background questions. Defendant told them his name, his birthdate (he was 21 years old), his cell phone number, and his last address in El Monte, California. Defendant told the detectives his family lived in Texas and he had gone there to visit. Defendant and the detectives also talked about defendant's education. Defendant explained he had graduated from high school at the age of 16, obtained a bachelor's degree in telecommunications and a master's degree in computer science, and was still studying computers at Palladium Technical Academy.

Detective Guzman then made the following statement. "Oh, well, we're here to talk to you. We're detectives. And – and you know, you – I'm sure you're aware of the rules. When we talk to people, we have to make sure that they're aware of their rights. [¶] Because you have the right to remain silent. And anything you say can be used against you in a court of law. You have the right to an attorney. You have the right to have that attorney present when we speak to you. And if you can't afford

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[3] The great bodily injury allegation was not submitted to the jury.

an attorney, one will be given to you free of charge. Do you understand?"

Defendant responded, "[y]es, sir."

Detective Guzman said they wanted to talk to him about why he was in custody and proceeded to ask questions about what brought him to Texas. The detectives did not specifically ask defendant if he wanted to waive his rights. But, defendant proceeded to answer the detectives' questions for the next hour. Defendant never asked for an attorney and never asked to terminate the questioning.

Defendant said he met Sophia and her father Daniel Bezner at a homeless shelter where both he and Daniel worked. Once they began dating, Sophia told defendant she hated her grandparents, primarily her grandmother. Part of the animosity stemmed from Daniel and Sophia having stolen money out of the Bezners' checking account which resulted in a serious argument when the Bezners found out what they had done. The relationship was also strained by the fact Susan repeatedly called Sophia a slut for having gotten pregnant and then having had an abortion. Sophia told defendant she was "fed up" and wanted to kill her grandparents and leave. He and Sophia came up with a plan to kill her grandparents with knives, dump their bodies and flee to Texas.

They first attempted their plan two nights before the murders took place. They had to abort their plan when the family dog, Brownie, interrupted them with barking when they entered the Bezners' bedroom. The next day, defendant asked Sophia if she truly wanted to go through with killing her grandparents because it was "going to ruin [her] whole freaking life." Sophia told defendant her life was already ruined and she

was fed up with their "shit" and wanted them dead. They agreed to try again that night.

Sometime in the early evening, Jack experienced chest pain and was taken to the hospital. When defendant spoke with Sophia about coming over, she told him what had happened. He again asked her about going through with their plan, and she was adamant about doing so. She told defendant that before leaving for the hospital, her grandparents had blamed Jack's heart condition on her. Later, after the Bezners had returned from the hospital and gone to bed, defendant went to the house. Sophia told defendant to take Brownie for a walk and tie her up somewhere so she could not interrupt them again. Defendant walked the dog about two blocks away from the house and tied her to a tree. Sophia snuck defendant into the house after he returned.

Defendant had a knife that he brought with him from his storage unit and Sophia got a knife from the kitchen. They went to the Bezners' bedroom and Sophia pried open the locked door. While the Bezners slept, defendant went to Jack's side of the bed and Sophia stood next to Susan's side. Defendant stabbed Jack "[m]aybe almost 20 times." Jack fell out of the bed in struggling with defendant, so defendant "jumped on top of him and choked him." He noticed that Sophia was struggling with Susan who was also fighting back. Susan tried to get the phone, so they grabbed it away from her. Defendant pushed Susan back down onto the bed and Sophia continued to stab her. Defendant also stabbed Susan "once just to make sure she was dead."

Sophia helped defendant pick up Jack's body from the floor and put him back into bed. They pulled the covers over both bodies so it would look like they were sleeping. They cleaned up

the blood on the floor and got out of their bloody clothes in the Bezners' bathroom. Defendant put on one of Jack's shirts and a pair of Sophia's pants. Sophia also changed into clean clothes. They put everything they cleaned up, along with the knives and their bloody clothes in a bag. They took Jack's wallet (which contained cash and a credit card) and the keys to the Bezners' car from Susan's purse and left the house around 6:00 a.m.

Defendant needed to get some of his belongings out of his storage unit, but they had to wait until the facility opened. In the meantime, they threw the bag containing their bloody clothes in a dumpster behind a movie theater near a Jack-in-the-Box restaurant where they usually met defendant's friend Chris who shared the storage unit with defendant. They then went to the Jack-in-the-Box and waited until Chris arrived. The three of them drove to the storage unit and defendant began emptying out most of his things and putting them in the car. Chris asked if they were leaving town and defendant said yes. Defendant asked to borrow some money for the trip, so Chris gave him $40. Defendant and Sophia then drove to Texas.

During the interview, defendant consented to a search of his storage unit in California.

2. The Trial Testimony

The case proceeded to a jury trial in December 2016. The testimony and evidence received at trial established the following material facts.

In August 2010, Daniel and Sophia were living with the Bezners. Daniel said that several days before his parents were murdered, they got into an argument with his daughter. Sophia and the Bezners fought over the fact Sophia had forged checks and stolen money from them. It was a serious argument with a

lot of yelling, and Susan threatened to have Sophia sent to an "orphanage" or "juvenile hall."

Daniel acknowledged that his daughter was dating defendant. He said he met defendant a couple of years earlier when defendant was "a client" at the shelter where he worked. Daniel had tried to prevent the relationship because Sophia was a minor, but he was unable to stop them from seeing each other.

On the evening of August 8, 2010, Jack experienced chest pain and was gasping for breath. Daniel called the paramedics. His father was taken to the hospital and his mother followed in their car. While they were gone, Daniel noticed Brownie was missing. He searched the neighborhood for about 45 minutes but could not find her. At one point during his search, Daniel noticed that defendant was sitting on the curb across from their house. Daniel did not say anything to defendant because he was preoccupied with finding Brownie. His parents returned from the hospital somewhere close to 2:00 a.m. and went to bed.

Daniel did not hear anything during the night. He explained that he was 95 percent deaf in one ear and 75 percent deaf in the other. In the morning, he woke up and saw that his parents' car was gone. He assumed they had gone back to the hospital or had done what the emergency room doctors had suggested which was to go see Jack's regular physician. Their bedroom door was closed and locked which was not unusual when they left the house. Daniel went about his normal day of collecting recycling materials and did not return home until sometime after 5:00 p.m. Later in the evening, his brother David came over and they discovered their parents were dead in their bedroom.

David Bezner, Daniel's younger brother, testified that he went to his parents' home around 8:00 p.m. on August 9 because they were not answering their phone. When he arrived, Daniel was in the front yard smoking a cigarette. They chatted briefly. David noticed his parents' car was gone so he assumed they were out. When he went inside, nothing appeared to be amiss in the house. He found his parents' bedroom door closed and locked. He asked Daniel if there was a spare key and he said no. David pried open the door with a butter knife. Upon discovering his parents in their bed, he called 911 and stayed on the line with them until law enforcement arrived.

Christopher Taylor testified that he shared a storage unit with defendant, and was acquainted with Sophia and Daniel as well. Mr. Taylor said that he and defendant both attended Palladium Technical Academy and they had a regular routine of meeting each morning at a Jack-in-the-Box restaurant, before heading to their storage unit to collect items and tools they needed for the day. They would then go to school. In the months preceding the murders, Sophia had started to accompany defendant.

On the morning of August 9, 2010, Mr. Taylor said their meeting seemed "a little weird." Both defendant and Sophia were quiet, almost withdrawn. Sophia was "usually very upbeat, chipper" and defendant was normally talkative. Defendant was oddly dressed in a pair of tight-fitting blue pants that Mr. Taylor had seen Sophia wearing in the past. He also had on a Hawaiian shirt he had previously seen on Daniel. They were driving a car he was not familiar with and there was a dog inside. When they went to their storage unit, defendant started unloading most of his belongings. Mr. Taylor asked what was going on and

defendant said he had to leave because he needed to go see his daughter who was sick. Defendant asked to borrow some money. Mr. Taylor agreed to lend him some money but they had to drive to the bank so he could withdraw it. While driving, a police car passed by and Sophia "ducked" down and said something like "shit, cops." They dropped Mr. Taylor back at the restaurant and drove off. The next day, Daniel called to tell him that his parents had been murdered.

A deputy medical examiner testified that both Jack and Susan died from multiple stab wounds. Jack suffered 47 stab wounds, and Susan suffered 112. Both had defensive wounds on their hands.

Detective Guzman testified about the scope of the murder investigation. He interviewed both Daniel and David. Daniel reported that his daughter Sophia was missing, that she was in a relationship with defendant, and she had a difficult relationship with his parents. There had been a recent incident about her stealing checks from her grandparents. Both Daniel and David reported that their parents' car was missing. Detective Guzman put out a stolen vehicle report and spoke with law enforcement officials in Texas. He also interviewed Mr. Taylor and recovered surveillance video from the storage unit facility for the morning of August 9, 2010, which corroborated Mr. Taylor's account of their activities that morning.

The blood evidence recovered from the home was limited to the Bezners' bedroom and their attached bathroom. The phone in the bedroom was bloodstained and knocked off the bedside table. The murder weapons were never found and none of defendant's DNA was found in the Bezners' bedroom.

Detective Guzman was notified on August 12 that officers in Texas had detained defendant and Sophia in the Bezners' missing car. He and his partner flew to Texas and interviewed defendant. The recorded statement, which was a little over an hour long, was played for the jury. No blood evidence was found in the car, but a credit card belonging to Jack, as well as several blank checks from the Bezners' account, were recovered.

Detective Guzman further explained they did not find evidence linking either Daniel or David to the murders. However, he eventually obtained Daniel's reluctant admission that he had helped Sophia take money from his parents' checking account.

Defendant did not testify and did not call any witnesses.

3. The Jury Questions

During the course of its deliberations, the jury asked several questions of the court. They first asked about the distance between the Bezners' home in California and the location in El Paso, Texas where defendant was apprehended with Sophia. After discussing the matter with counsel, the court responded to the jury that the answer was not in evidence and they were not to speculate or look for the answer from other sources. They asked for a readback of Detective Guzman's testimony regarding the DNA evidence. The readback was provided and the jury returned to their deliberations.

On the second day of deliberations, the jury asked for clarification whether "to find guilt for aiding and abetting . . . the jury must agree on who the perpetrator is to satisfy the first condition [that] 'the perpetrator committed the crime.' " The court discussed the matter with counsel, including considering allowing counsel to reargue the issue. Defendant objected to the

court providing any clarification other than an instruction to reread the pertinent instructions. The court decided to limit its response accordingly, and advised the jury to read CALCRIM Nos. 400 and 401 regarding aiding and abetting liability. The court told the jury that if they had any further concerns, they should send out another question.

Later that same day, the jury advised the court it could not come to an agreement on a verdict. The foreperson told the court they had taken three votes, the last two of which were 11 to 1, but could not reach an agreement. The foreperson said he believed the main issue continued to be the aiding and abetting instructions. The court asked if there was any clarification or further instruction that might assist them in their deliberations. The foreperson responded, "[m]aybe we should just go and talk about it." The jury returned to the jury room to continue deliberating.

Shortly thereafter, the jury advised it had the following question: "Page 7 line # 401 says that the People must prove that the perpetrator committed the crime. The People did not talk about a perpetrator other than Sophia and [defendant]. If it is believed that [defendant] aided + abeded [*sic*] <u>another</u> perpetrator can condition 1 be satisfied? If this condition cannot be satisfied we will not be able to come to an agreement."

After discussing the question with counsel, the court excused the jury for the day, explaining it needed time to formulate a clear response. The following morning, the court and counsel further discussed how to respond. The court said it was inclined to give CALJIC No. 3.00 defining principals, and to modify CALCRIM Nos. 373 and 401 as to certain singular and plural articles. Defendant objected to the court's proposal to

modify CALCRIM Nos. 373 and 401, arguing it would coerce the jury into a guilty verdict. The court overruled defendant's objection but agreed with defendant's request to give CALCRIM No. 3551.

The court instructed the jury with CALJIC No. 3.00 as follows: "All persons who are involved in committing a crime are referred to as principals in that crime. Each principal, regardless of the extent or manner of participation is guilty of a crime. Principals include: [¶] 1. Those who directly and actively commit the act constituting the crime, or [¶] 2. Those who aid and abet the commission of the crime. [¶] The aider and abettor's guilt is determined by the combined acts of all participants as well as that person's own mental state."

The court re-instructed with CALCRIM No. 401, but modified some references to "the perpetrator" by replacing it with "a perpetrator." The court also re-instructed with CALCRIM No. 373 but modified the first sentence. Instead of stating that the "evidence shows that another person" may have been involved, the first sentence of the modified instruction read: "The evidence shows that another person or persons may have been involved in the commission of the crimes . . . ."

Finally, the court instructed with CALCRIM No. 3551 as follows: "Sometimes juries that have had difficulty reaching a verdict are able to resume deliberations and successfully reach a verdict. Please consider the following suggestions. [¶] Do not hesitate to reexamine your own views. Fair and effective jury deliberations require a frank and forthright exchange of views. [¶] Each of you must decide the case for yourself and form your individual opinion after you have fully and completely considered all of the evidence with your fellow jurors. It is your duty as

jurors to deliberate with the goal of reaching a verdict if you can do so without surrendering your individual judgment. Do not change your position just because it differs from that of other jurors or just because you or others want to reach a verdict. Both the People and the Defendant are entitled to the individual judgment of each juror. [¶] It is up to you to decide how to conduct your deliberations. You may want to consider new approaches in order to get a fresh perspective. [¶] Let me know whether I can do anything to help you further, such as give additional instructions or clarify instructions I have already given you. [¶] Please continue your deliberations at this time. If you wish to communicate with me further, please do so in writing."

The jury returned to their deliberations. The jury then sent out a final question: "Do we the jury have to agree on who the perpetrators or perpetrator is? [¶] If the majority of the jury believes that a juror is speculating on evidence that is missing, has shown physical emotion (crying), is not fit to follow rules, is it possible to replace with the alternate juror?"

While the court and counsel discussed an appropriate response, the jury advised the court it had reached a verdict.

4. The Verdict and Sentencing

The jury found defendant guilty of the first degree murder of both victims, and found true the multiple-murder special-circumstance allegation. They found the personal use of a knife allegation not true as to both counts. The court sentenced defendant to two consecutive life terms without the possibility of parole.

This appeal followed.

DISCUSSION

1. Defendant's Recorded Pretrial Statement

Defendant contends the court erred in denying his motion to suppress his pretrial statement because he never expressly or impliedly waived his right against self-incrimination. Defendant argues that where, as here, there is no express waiver of rights under *Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*), the fact a defendant responds to questions is insufficient to establish an implied waiver. The trial court must make an additional determination that the defendant understood those rights in order to conclude there was a valid implied waiver. Defendant contends the trial court never made such a determination, but improperly found an implied waiver solely based on the fact defendant answered the officers' questions. We disagree.

"In reviewing the trial court's denial of a suppression motion on *Miranda* and involuntariness grounds, ' " 'we accept the trial court's resolution of disputed facts and inferences, and its evaluations of credibility, if supported by substantial evidence. We independently determine from the undisputed facts and the facts properly found by the trial court whether the challenged statement was illegally obtained.' " ' [Citations.] Where, as was the case here, an interview is recorded, the facts surrounding the admission or confession are undisputed and we may apply independent review." (*People v. Duff* (2014) 58 Cal.4th 527, 551 (*Duff*).)

Defendant does not contend that an express waiver is required. He acknowledges the well-established precedent, beginning with *North Carolina v. Butler* (1979) 441 U.S. 369 (*Butler*) in which the United States Supreme Court rejected the institution of an "inflexible *per se* rule" that mandated an express

waiver of *Miranda* rights. (*Butler,* at pp. 373-376.) "An 'implicit waiver' of the 'right to remain silent' is sufficient to admit a suspect's statement into evidence." (*Berghuis v. Thompkins* (2010) 560 U.S. 370, 384 (*Berghuis*).)

Defendant argues instead that the court failed to consider and make a finding about whether defendant understood his rights and made a knowing waiver. "[T]he question of waiver must be determined on 'the particular facts and circumstances surrounding [the] case, including the background, experience, and conduct of the accused.' " (*Butler*, *supra*, 441 U.S. at pp. 374-375.) Defendant underscores the following language in *Berghuis*: "If the State establishes that a *Miranda* warning was given and the accused made an uncoerced statement, this showing, standing alone, is insufficient to demonstrate 'a valid waiver' of *Miranda* rights. [Citation.] *The prosecution must make the additional showing that the accused understood these rights*." (*Berghuis*, *supra*, 560 U.S. at p. 384, italics added.)

The prosecution's burden in this regard is simply to demonstrate, by a preponderance of the evidence, that the defendant understood the *Miranda* advisement and voluntarily chose to speak with law enforcement. (*Duff*, *supra*, 58 Cal.4th at p. 551.) There are no rigid criteria for determining a knowing and voluntary implied waiver. Each case must be judged on its own facts, based on the totality of circumstances. (*Ibid*.) " 'In general, if a custodial suspect, having heard and understood a full explanation of his or her *Miranda* rights, then makes an uncompelled and uncoerced decision to talk, he or she has thereby knowingly, voluntarily, and intelligently waived them.' " (*People v. Parker* (2017) 2 Cal.5th 1184, 1216 (*Parker*).)

The record here amply supports the trial court's finding of an implied waiver and the denial of defendant's motion to suppress.

The detectives' initial discussion with defendant, prior to the *Miranda* advisement, was constitutionally permissible. The detectives merely sought general background information about defendant's education, date of birth and former addresses, and were not attempting to elicit any incriminating statement. (See e.g., *People v. McCurdy* (2014) 59 Cal.4th 1063, 1087 [initial questions attempting "to establish a rapport" with the defendant do not raise the specter of a constitutional violation]; *People v. Gamache* (2010) 48 Cal.4th 347, 388 ["smalltalk" and neutral inquiries regarding the defendant's military experience did not amount to interrogation designed to elicit an incriminating response].)

Detective Guzman then provided defendant with a complete advisement of his *Miranda* rights. Detective Guzman did *not* trivialize the importance of those rights. (*People v. Musselwhite* (1998) 17 Cal.4th 1216, 1237-1238 [referring to *Miranda* rights as a technicality or otherwise "minimizing their legal significance" may suggest a "species of prohibited trickery" that weighs against a finding of a knowing waiver].) Indeed, defendant does not contend the advisement was inadequate, only that the court failed to make a determination that his decision to speak with the detectives reflected a knowing waiver of his rights. The argument is without merit.

There is no suggestion here that the detectives used any form of physical or mental intimidation or that defendant was in any way afraid of them. Defendant was not subjected to a coercive environment or questioned for an unduly demanding

period of time. The interview was only a little over an hour long. There is no evidence defendant was impaired or unable to comprehend the questions posed to him. The transcript of the interview demonstrates that defendant's answers were coherent and interspersed with volunteered information, including defendant agreeing to let the detectives search his storage unit in California. Moreover, defendant, by his own admission, was well-educated. He stated without hesitation or equivocation that he understood the *Miranda* advisement read to him by Detective Guzman.

Both the United States Supreme Court and our Supreme Court have found implied waivers on similar records.

In *Berghuis*, the evidence established the defendant "received a written copy of the *Miranda* warnings"; the defendant "could read and understand English" and "was given time to read the warnings"; and the detective read the warnings out loud to the defendant. (*Berghuis*, *supra*, 560 U.S. at pp. 385-386.) The court also found it significant there was no evidence of coercion. (*Id*. at p. 386.) The defendant did not claim he had been threatened or injured or that "he was in any way fearful." (*Ibid*.) The interrogation lasted for three hours during the afternoon, but there was no evidence the defendant was deprived of food or sleep or was other worn down by the circumstances surrounding the interview. (*Id.* at pp. 386-387.)

In *People v. Whitson* (1998) 17 Cal.4th 229 (*Whitson*), "the record [was] devoid of any suggestion that the police resorted to physical or psychological pressure to elicit statements from [the] defendant. To the contrary, [the] defendant's willingness to speak with the officers [was] readily apparent from his responses. He was not worn down by improper interrogation tactics, lengthy

questioning, or trickery or deceit." (*Id*. at pp. 248-249.) Even though the defendant had been injured in a collision prior to his several interviews with the police, "there was no direct evidence that *during* any of his interviews with the police, his judgment was clouded or otherwise impaired by pain, medications, or surgical procedures. The police officers testified, without contradiction, that [the] defendant's answers were clear and responsive." (*Id*. at p. 249.) The transcripts of the interviews supported their testimony. (*Ibid*.)

Further, "[a]lthough [the] defendant possessed relatively low intelligence, he was sufficiently intelligent to pass a driver's test" and to initially attempt to deceive the officers about the details of the chase that led to the collision. (*Whitson*, *supra*, 17 Cal.4th at p. 249.) The defendant affirmatively indicated he understood his rights after being so advised by the officers, and "there was no evidence" the defendant lacked sufficient intelligence to understand his rights "or the consequences of his waiver." (*Id*. at pp. 249-250; see also *Parker*, *supra*, 2 Cal.5th at p. 1216 [implied waiver found where the defendant, who had prior experience with the criminal justice system, confirmed he understood his rights and "proceeded to actively participate in the conversation with the detectives" knowing it was being tape-recorded].)

2. The Court's Response to the Jury's Questions During Deliberations

Defendant contends the court violated his constitutional rights to due process and a fair trial by responding to the jury's questions in a manner that encouraged a conviction of defendant based on speculation inconsistent with the prosecution's theory of

the case and wholly unsupported by any evidence in the record. We are not persuaded.

"The Supreme Court has held that Penal Code section 1138 imposes on the trial court a mandatory 'duty to clear up any instructional confusion expressed by the jury.' [Citation.] 'When a jury asks a question after retiring for deliberation, "[Penal Code] [s]ection 1138 imposes upon the court a duty to provide the jury with information the jury desires on points of law." [Citation.] But "[t]his does not mean the court must always elaborate on the standard instructions. Where the original instructions are themselves full and complete, the court has discretion under [Penal Code] section 1138 to determine what additional explanations are sufficient to satisfy the jury's request for information." [Citation.] We review for an abuse of discretion any error under [Penal Code] section 1138.' " (*People v. Lua* (2017) 10 Cal.App.5th 1004, 1016.)

The record demonstrates that after each jury note or question, the court thoroughly discussed the issue with counsel before formulating a response.

Defendant claims error only as to the court's handling of the penultimate question in which the jury requested clarification about direct perpetrators and aiders and abettors. The court instructed the jury with CALJIC No. 300 defining principals to a crime, and then re-instructed with modified versions of CALCRIM Nos. 373 and 401. The modifications were minor, changing only articles or referring to perpetrator in the plural, instead of in the singular.

Defendant concedes, as he must, that the modified instructions accurately stated the law regarding aiding and abetting liability. " ' "[J]urors need not unanimously agree on

whether the defendant is an aider and abettor or a principal even when different evidence and facts support such conclusion." ' " (*People v. Maury* (2003) 30 Cal.4th 342, 423.) " 'It is settled that as long as each juror is convinced beyond a reasonable doubt that defendant is guilty of murder as that offense is defined by statute, it need not decide unanimously by which theory he is guilty. [Citations.] More specifically, the jury need not decide unanimously whether defendant was guilty as the aider and abettor or as the direct perpetrator. . . . [¶] . . . [¶] Not only is there no unanimity requirement as to the theory of guilt, the individual jurors themselves need not choose among the theories, so long as each is convinced of guilt. Sometimes, as probably occurred here, the jury simply cannot decide beyond a reasonable doubt exactly who did what. There may be a reasonable doubt that the defendant was the direct perpetrator, and a similar doubt that he was the aider and abettor, but no such doubt that he was one or the other.' " (*People v. Jenkins* (2000) 22 Cal.4th 900, 1024-1025.)

Defendant suggests the jury was speculating about an unknown third person participating in the crimes. But that is a mischaracterization of the jury's final note which indicated that the majority of the jurors believed "a juror" was speculating about "evidence that is missing." There was never any communication that the jury as a whole was confused about the evidence or was speculating about unknown third parties.

Before the court could respond to this final question, the jury indicated it had reached a verdict. The logical inference is that with further deliberation the jury was able to resolve the juror's concerns and reach a unanimous decision.

Moreover, nothing about the court's response removed any issue of fact from the jury, reduced the prosecution's burden or directed a verdict for the prosecution. Indeed, at defendant's request, the court included CALCRIM No. 3551 in its response to the jury. Defendant has not shown any reasonable basis to believe the court's response coerced the jury to reach a guilty verdict.

DISPOSITION

The judgment of conviction is affirmed.

GRIMES, J.

WE CONCUR:

RUBIN, Acting P. J.

DUNNING, J.*

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