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

THE PEOPLE,

Plaintiff and Respondent,

v.

RODNEY LOUIS SIMS,

Defendant and Appellant.

B271254

Los Angeles County  
Super. Ct. No. GA096858-  
01

APPEAL from a judgment of the Superior Court of  
Los Angeles County, Jared D. Moses, Judge. Affirmed.

Stephanie L. Gunther, 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, Stacy Schwartz and Timothy L. O'Hair,  
Deputy Attorneys General, for Plaintiff and Respondent.

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## **INTRODUCTION**

Defendant Rodney Louis Sims appeals from his judgment of conviction for second-degree robbery, with a true finding that he personally used a dangerous and deadly weapon during the commission of the robbery. Defendant contends that the trial court erred in admitting incriminating statements he made to a police officer during a post-arrest interrogation. We affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### **1. The robbery**

On August 8, 2015, Enrique Rodriguez was working at the front desk of the Lincoln Plaza Hotel in Monterey Park. Around 5:00 a.m., defendant entered the hotel wearing a black hooded sweatshirt with the hood pulled up, a shirt wrapped around his face, and a pair of black basketball shoes with a white stripe running around the bottom of each shoe. Carrying a box cutter in one hand and a screwdriver in the other, defendant approached the front desk and said to Rodriguez, “ ‘Open the cash register [and] give me the money in the register, . . . don’t do anything stupid, you probably have a family[.]’ ” Defendant then moved Rodriguez to a back room and made him lie down on the ground. Defendant returned to the front desk, took \$395 from the cash register, and left the hotel. As he returned to his car, defendant tossed the box cutter, screwdriver, and t-shirt that he had wrapped around his face in an alley near the hotel, and he threw the sweatshirt he was wearing out of his car window as he drove away.

### **2. The arrest**

A few minutes after he no longer heard noises coming from the hotel lobby, Rodriguez called 9-1-1 to report the robbery.

Rodriguez described defendant as a “black [male], . . . mid-20s, approximately five-eight to five-ten.”

Shortly after Rodriguez reported the robbery, Officer Raymond Cota of the Monterey Park Police Department spotted defendant driving a green car about half a mile from the hotel. After Officer Cota stopped the car, he searched defendant and found a stack of bills totaling \$395 in one of defendant’s pockets, which matched the amount of money missing from the hotel’s cash register. The bills were held together with a paper clip in the same manner that the hotel used to store money in its registers.

Officer Cota arrested defendant and brought him to Rodriguez for identification. Although Rodriguez did not see defendant’s face during the robbery, he identified defendant as the person who robbed the hotel based on defendant’s skin color and the shoes defendant was wearing. Specifically, Rodriguez observed that the pair of shoes defendant was wearing after he was arrested matched the shoes worn by person who robbed the hotel. After Rodriguez identified defendant, Officer Cota booked defendant at the Monterey Park police station.

### **3. The interrogation**

Officer Robin Lopez questioned defendant while he was in custody at the police station. Before advising defendant of his *Miranda*<sup>1</sup> rights, Officer Lopez asked him several background questions about his age, where he lived, his recent employment, and his relationships with his daughter and mother.

Officer Lopez then explained why she was questioning defendant: “Okay, well um obviously you know why I’m here.

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<sup>1</sup> *Miranda v. Arizona* (1966) 384 U.S. 436, 16 L.Ed. 2d 694, 86 S.Ct. 1602 (*Miranda*).

We normally wouldn't be here at this time in the morning on a Saturday. But from what I understand from the guys, you've been really cooperative with everybody, which we all appreciate. Um, I really just wanted to kind of come in here and give you an opportunity, tell me what happened and give me your side of the story. 'Cause like I said, the guys said you were really cooperative and pretty remorseful, kind of realized after the deal oh, what did I just do, right? So I know this isn't your first time around the block, so let me just read you your rights real quick." Officer Lopez read defendant his *Miranda* rights, which he acknowledged he understood.<sup>2</sup>

Officer Lopez then immediately began questioning defendant about what he had done during the days leading up to the robbery. Defendant explained that he had last worked two days earlier, and that the day before the robbery he had run errands, cashed a paycheck, and went to a karaoke bar with a female friend.

Officer Lopez asked defendant whether he was experiencing financial difficulties that may have motivated him to rob the hotel. Defendant explained that he was having a difficult time making ends meet because he had been released from prison about a year earlier and had since purchased an expensive phone for his daughter and had accumulated several parking tickets.

Defendant then explained that he was "hurting right now" because he loves his daughter and he knew that she and his mother would be upset about his arrest. Officer Lopez asked

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<sup>2</sup> Defendant verbally acknowledged he understood his *Miranda* rights and signed an acknowledgment form. Although the form was never introduced in the trial court, defendant does not dispute that he signed it.

defendant if he was feeling bad because of what he had done at the hotel earlier that morning. Defendant responded that he felt “bad for what [he] did” because he “was hurting too many people right now, hurting [himself].”

The conversation then turned to how defendant had arrived in Monterey Park before he robbed the hotel. He explained that he drove to Monterey Park after dropping his female friend off in Compton. He had previously worked a security job in the city, so he was familiar with the area. After driving around for a while, he thought the Lincoln Plaza Hotel looked like a “good target,” so he parked his car about half a mile away from the hotel. When he did not see anybody around, he walked straight to the hotel.

Officer Lopez then tried to prompt defendant into describing what he did once he got to the hotel. Defendant responded that he wanted to be a man and take responsibility for his actions, but he also did not want to get himself into trouble by “say[ing] things” because he was a two-time felon and knew that it would be bad for him to speak.

Officer Lopez asked defendant to cooperate with her. She explained that the victim of the robbery had already identified him as a suspect and that the police had video footage of him robbing the hotel. She told defendant that by cooperating with the police, he could set a positive example for his 15 year-old daughter.

She then asked defendant if he had used a box cutter during the robbery. Defendant replied, “I didn’t cut nobody, ma’am.” Officer Lopez again asked defendant if he had carried a box cutter during the robbery, to which defendant replied, “I want to be cooperative. I want to be cooperative.” Officer Lopez responded: “Well then I need you to be cooperative, because . . . you said it yourself. You’re already a two-time felon. The only thing that’s going to help you at this point is you letting me go to

the DA next week and show them that you were cooperative, that you feel some remorse, that you took responsibility for what you did. You know, it may mean the difference between a new charge or just a violation. Who knows? 'Cause you're on parole right now, right?"

Defendant acknowledged that he was on parole and claimed that he had made "too many mistakes." He confirmed that he carried a box cutter during the robbery, but claimed that he did not use it to hurt Rodriguez.

He then explained that he had gone 15 months since he was released from custody without doing anything wrong, and that this was his first time "doing something like this" since he got out of prison. Officer Lopez told defendant that the robbery was only a "hiccup" that he could move past when he got out "next week or next month."

Officer Lopez and defendant then engaged in the following conversation:

"[Lopez:] You still have a future. It's not over for you. It may not be until next month, but you certainly have that coming up, and you've got to be able to show your daughter . . .

[Defendant:] Mm-hmm.

[Lopez:] That you made a mistake, that you owned up to it, that you told the truth, you take your lumps, and then you get back to her. Right?

[Defendant:] Well I think I'll be doing 25 to life, ma'am. I can't even, I hear what you saying; believe me. But these people not going to let me off with nothing.

[Lopez:] Well I'm not saying you're going to get off with nothing, but I don't necessarily think you're going to get 25 to, I mean I know you said you got two priors. But if they didn't make them strikes, then. . .

[Defendant:] I think they did make them strikes.

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[Lopez:] Okay, okay. Well like I've said, I've looked at your raps. It doesn't show that you have two strikes. It shows that you have the two robberies. I'll definitely, you know, confirm that with the court when I go up on Tuesday. But regardless, you need to be able to look yourself in the mirror and know you did the right thing."

Defendant told Officer Lopez that he had never intended to harm anyone at the hotel. He then described in detail how he committed the robbery. He said that he tossed the box cutter and screwdriver in an alleyway as he walked back to his car and that he threw his sweatshirt out of the window of his car as he was driving away from the hotel. After concluding the interview at the police station, defendant accompanied Officer Lopez and other police officers to an area near the Lincoln Plaza Hotel, where he helped them recover the box cutter, the screwdriver, and the t-shirt he used to cover his face during the robbery.

#### **4. The charges**

The People charged defendant with second-degree robbery (Pen. Code,<sup>3</sup> §§ 211, 212.5, subd. (c)), with an allegation that he personally used a dangerous and deadly weapon (a box cutter and a screwdriver) during the commission of the robbery (§ 12022, subd. (b)(1)). The People also alleged defendant had been convicted of three prior serious felony convictions, two of which were strikes within the meaning of the Three Strikes law (§§ 667, 667.5, 1170.12, & 1192.7).

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<sup>3</sup> All undesignated statutory references are to the Penal Code.

## **5. The motion to exclude defendant's statements to Officer Lopez**

Before the jury was selected, defendant moved to exclude the statements he made about the robbery during his interrogation with Officer Lopez. Defendant argued the statements were unlawfully obtained because he neither expressly nor impliedly waived his rights under *Miranda*. He also argued that his confession was involuntary because it was coerced by Officer Lopez's promises of leniency concerning the prosecution of the robbery.

The court denied defendant's motion. The court first found that defendant had implicitly waived his *Miranda* rights and that his waiver was knowing, intelligent, and voluntary. The court observed that Officer Lopez had read defendant his *Miranda* rights and defendant had acknowledged being advised of his rights before making any incriminating statements. The court also noted that defendant had considerable experience speaking with law enforcement during his prior run-ins with the law and that Officer Lopez used a "light touch" while questioning defendant.

The court then found defendant voluntarily confessed to committing the robbery. Specifically, the court found Officer Lopez did not coerce defendant's confession by promising leniency in defendant's prosecution for the robbery. The court observed that Officer Lopez's statements to defendant that it could be possible he would not receive a third-strike sentence if he were to cooperate with the police's investigation involved "fairly light-handed passive references" that did not "explicitly promis[e] anything." The court stated, "[Officer Lopez] never expressly says I'm going to get you a deal if you tell me what happened, I'm going to get you less than 25 to life. I mean, there are no express promises or implied promises of leniency here. She leaves it very



much up in the air.” The court explained that Officer Lopez’s statements to defendant reflected “uncertainty” that defendant’s commission of the robbery could lead to “a new charge, it could be a violation, who knows.”

## **6. The trial, verdict, and sentencing**

Defendant was tried in February 2016. Officer Lopez, Officer Cota, and Rodriguez testified for the prosecution. Officer Lopez testified about defendant’s statements during the August 8, 2015 interrogation.<sup>4</sup> Specifically, she explained that defendant was cooperative throughout the interrogation and that he had provided a step-by-step explanation of how he committed the robbery. Defendant did not present any evidence in his defense.

The jury convicted defendant of second-degree robbery and found true the allegation that he used a deadly and dangerous weapon during the commission of the crime. Before sentencing, defendant waived his right to a jury trial on the prior conviction allegations, the truth of which he later admitted. The court sentenced defendant to a total term of 35 years to life in state prison.

Defendant filed a timely notice of appeal.

## **DISCUSSION**

Defendant contends the court violated his right against self-incrimination under the Fifth Amendment to the United States Constitution when it admitted the statements he made to Officer Lopez during the August 8, 2015 interrogation because those statements were the product of coercive police conduct. In particular, defendant asserts: (1) Officer Lopez used deceptive

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<sup>4</sup> The prosecution did not play the audio recording of the August 8, 2015 interrogation to the jury.

and manipulative tactics to “soften” him up and induce him into waiving his *Miranda* rights; (2) Officer Lopez used promises of leniency to coerce defendant into confessing to committing the robbery; and (3) Officer Lopez used a pre-warning confession to extract defendant’s post-warning confession. As we explain below, the trial court properly admitted defendant’s statements.

### **1. Applicable law and standard of review**

The Fifth Amendment to the United States Constitution provides that “[n]o person . . . shall be compelled in any criminal case to be a witness against himself . . .” (U.S. Const., 5th Amend.) In *Miranda*, “the United States Supreme Court ‘adopted a set of prophylactic measures to protect a suspect’s Fifth Amendment right from the “inherently compelling pressures” of custodial interrogation.’ [Citation.] Pursuant to *Miranda*, a suspect ‘must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires.’ [Citation.]” (*People v. Linton* (2013) 56 Cal.4th 1146, 1170–1171 (*Linton*).)

Under *Miranda*, “ ‘a suspect [may] not be subjected to custodial interrogation unless he or she knowingly and intelligently has waived the right to remain silent, to the presence of an attorney, and, if indigent, to appointed counsel.’ [Citations.]” (*People v. Dykes* (2009) 46 Cal.4th 731, 751.) “The waiver must be ‘voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception’ [citation], and knowing in the sense that it was ‘made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.’

[Citation.]” (*People v. Saucedo-Contreras* (2012) 55 Cal.4th 203, 219.)

In addition, the Fourteenth Amendment to the United States Constitution “ ‘precludes the admission of any involuntary statement obtained from a criminal suspect through state compulsion.’ [Citation.]” (*People v. McCurdy* (2014) 59 Cal.4th 1063, 1086 (*McCurdy*).) “ ‘ “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.] [¶] “A confession may be found involuntary if extracted by threats or violence, obtained by direct or implied promises, or secured by the exertion of improper influence. [Citation.] Although coercive police activity is a necessary predicate to establish an involuntary confession, it ‘does not itself compel a finding that a resulting confession is involuntary.’ [Citation.] The statement and the inducement must be causally linked. . . .” ’ [Citation.] A confession is not rendered involuntary by coercive police activity that is not the ‘motivating cause’ of the defendant’s confession.” (*Linton, supra*, 56 Cal.4th at p. 1176.)

The prosecution bears the burden of establishing by a preponderance of the evidence that, under the totality of the circumstances of the interrogation, the defendant’s waiver of his *Miranda* rights was knowing, intelligent, and voluntary, and that the defendant’s confession was voluntarily made. (*Linton, supra*, 56 Cal.4th at pp. 1171, 1176.) “ ‘ “On appeal, the trial court’s findings as to the circumstances surrounding the confession are upheld if supported by substantial evidence, but the trial court’s finding as to the voluntariness of the confession is subject to independent review.’ ” [Citation.] [Citation.] “ “[W]hen a reviewing court considers a claim that a confession has been

improperly coerced, if the evidence conflicts, the version most favorable to the People must be relied upon if supported by the record. [Citations.]” ’ [Citation.]” (*People v. Tully* (2012) 54 Cal.4th 952, 993 (*Tully*).)

**2. Officer Lopez did not impermissibly soften defendant up before he waived his *Miranda* rights.**

Defendant contends the court should have excluded the statements he made during his interrogation with Officer Lopez because those statements “were the product of the officer’s ‘clever softening up,’ which rendered his waiver involuntary.” Specifically, defendant asserts Officer Lopez asked pre-warning questions about defendant’s family and financial status before reading him his *Miranda* rights in order to expose his psychological “vulnerabilities” and to “emotionally manipulate” him into waiving his *Miranda* rights and confessing to committing the robbery. We disagree.

The police are allowed to question an in-custody defendant before advising him of his *Miranda* rights so long as the questions “would not reasonably be construed as calling for an incriminating response.” (*McCurdy, supra*, 59 Cal.4th at pp. 1086–1087.) For example, an investigating officer may attempt to build a rapport with the defendant before advising him of his *Miranda* rights, so long as the officer’s questions or statements would not likely elicit an incriminating response or procure an untrue statement. (*Id.* at pp. 1087–1088.) Likewise, an officer may ask a defendant routine booking questions about a defendant’s identity and other statistical information before advising the defendant of his *Miranda* rights. (*People v. Honeycutt* (1977) 20 Cal.3d 150, 159 (*Honeycutt*).) Police are prohibited, however, from using deceptive tactics designed to elicit an incriminating response or induce a waiver of a defendant’s *Miranda* rights. (*Id.* at pp. 159–161.)

Defendant relies on *Honeycutt* to argue his *Miranda* waiver was involuntary. The defendant in *Honeycutt* initially was hostile to one of the interrogating officers. (*Honeycutt, supra*, 20 Cal.3d at p. 158.) After that officer left the interrogation room, a different officer who had known the defendant for about 10 years engaged the defendant in an unrecorded discussion that lasted for about 30 minutes. (*Ibid.*) During that conversation, the officer and the defendant discussed unrelated past events and former acquaintances, and the officer made disparaging comments about the victim. (*Ibid.*) The officer could tell that the defendant was beginning to “‘soften[] up’” while they talked, so he continued to speak with the defendant. (*Ibid.*) By the end of the conversation, the defendant indicated he would talk about the underlying offense. (*Ibid.*) After he was advised of his *Miranda* rights, the defendant waived his rights and confessed to beating and stabbing the victim. (*Id.* at p. 159.)

The court in *Honeycutt* held the defendant’s confession should have been suppressed because his *Miranda* waiver was involuntary. (*Honeycutt, supra*, 20 Cal.3d at p. 161.) The court found that the police employed impermissible questioning tactics because the defendant “was at all times the primary suspect and the conversation-warning-interrogation sequence was intended to elicit a confession from the inception of the conversation.” (*Id.* at pp. 159–161.) The court explained, “When the waiver results from a clever softening-up of a defendant through disparagement of the victim and ingratiating conversation, the subsequent decision to waive without a *Miranda* warning must be deemed to be involuntary for the same reason that an incriminating statement made under police interrogation without a *Miranda* warning is deemed to be involuntary.” (*Id.* at pp. 160–161.)

Defendant’s reliance on *Honeycutt* is misplaced. Unlike the defendant in *Honeycutt*, defendant did not have a prior

relationship with his interrogating officer. In addition, the questions Officer Lopez asked defendant prior to reading him his *Miranda* rights addressed only defendant's background information, such as his address, his employment history, and his familial relationships, and none of the questions were likely to induce defendant to make incriminating responses. Officer Lopez never questioned defendant about the robbery or made denigrating remarks about the victim before she advised him of his *Miranda* rights. Further, the amount of time Officer Lopez spent questioning defendant prior to advising him of his *Miranda* rights was relatively short compared to the 30 minutes spent by the officer speaking with the defendant in *Honeycutt*—Officer Lopez's pre-warning questions span only a little more than three pages of the more than 50-page interrogation transcript. In sum, we cannot conclude that the questions Officer Lopez asked defendant before advising him of his *Miranda* rights improperly "softened" defendant up and caused him to involuntarily waive those rights.

**3. Officer Lopez did not coerce defendant's confession by using promises of leniency.**

Defendant next contends his confession was involuntary because it was coerced by Officer Lopez's promises of leniency. In particular, defendant asserts that Officer Lopez made promises of leniency that caused him to confess to committing the robbery when she told him that: (1) if he cooperated with the police investigation and confessed to committing the robbery, he potentially could face only a parole violation instead of a new criminal charge; and (2) even if he did confess, he might not face a third-strike sentence if he were convicted of the robbery.

In general, a confession is considered voluntary if the defendant was entirely self-motivated in deciding to speak—that is, “ “if he freely and voluntarily chooses to speak without ‘any

form of compulsion or promise of rewards. . . .’ [Citation.]” ’ ’  
(*Tully, supra*, 54 Cal.4th at p. 985.) However, if an interrogating officer “ ‘makes an express or clearly implied promise of leniency or advantage for the accused which is a motivating cause of the decision to confess, the confession is involuntary and inadmissible as a matter of law.’ [Citation.]” (*Ibid.*)

“ ‘A confession is “obtained” by a promise within the proscription of both the federal and state due process guaranties if and only if inducement and statement are linked, as it were, by “proximate” causation. . . . The requisite causal connection between promise and confession must be more than “but for”: causation-in-fact is insufficient.’ [Citation.] ‘This rule raises two separate questions: was a promise of leniency either expressly made or implied, and if so, did that promise motivate the subject to speak?’ [Citation.] To answer these questions ‘ “an examination must be made of ‘all the surrounding circumstances—both the characteristics of the accused and the details of the interrogation.’ ” ’ [Citation.]” (*Tully, supra*, 54 Cal.4th at pp. 985–986.)

“ ‘[M]ere advice or exhortation by the police that it would be better for the accused to tell the truth when unaccompanied by either a threat or a promise does not render a subsequent confession involuntary. . . . Thus, “[w]hen the benefit pointed out by the police to a suspect is merely that which flows naturally from a truthful and honest course of conduct,” the subsequent statement will not be considered involuntarily made. [Citation.] On the other hand, “if . . . the defendant is given to understand that he might reasonably expect benefits in the nature of more lenient treatment at the hands of the police, prosecution or court in consideration of making a statement, even a truthful one, such motivation is deemed to render the statement involuntary and

inadmissible. . . .’ [Citation.]” (*People v. Holloway* (2004) 33 Cal.4th 96, 115 (*Holloway*).)

Here, the totality of the circumstances surrounding the interrogation shows that defendant’s confession was not coerced by promises of leniency. Officer Lopez never made an express promise that defendant would receive more lenient treatment during his prosecution if he confessed to the robbery. She never told defendant that she would convince, or attempt to convince, the District Attorney to pursue lesser charges against him or to not pursue a new criminal charge if he confessed to the robbery. Instead, she only encouraged defendant to tell the truth and explained to him that doing so could work to his advantage, which is a permissible form of questioning. (See *Holloway, supra*, 33 Cal.4th at p. 115 [it is permissible to encourage a suspect to tell the truth and to suggest that doing so could work to the suspect’s advantage].) Although Officer Lopez stated that defendant could face only a parole violation as opposed to a new charge if he confessed to the robbery, she only noted the potential consequences that could stem from a confession, and she never made any assurances that defendant would likely receive more favorable treatment in his prosecution if he did confess. In fact, she expressed uncertainty as to what effect defendant’s confession would have on his prosecution, stating “Who knows?” immediately after she told defendant that he could face a parole violation or a new criminal charge if he confessed to the robbery.

Officer Lopez also did not make a promise of leniency when she expressed doubt about whether defendant would receive a third-strike sentence if he confessed to the robbery. Officer Lopez never told defendant that he would receive, or that she would try to help him receive, a more lenient sentence if he confessed to the robbery, and she never suggested that his confession would likely cause the prosecution to pursue a more lenient sentence.



Instead, she only told defendant that she did not think he was eligible for a third-strike sentence (regardless of whether he confessed or not) based on what she knew about his criminal history. In discussing whether defendant was eligible for a third-strike sentence, Officer Lopez again made clear that she was uncertain what effect defendant's confession would have on his prosecution, and she told him that she would confirm his prior strike status with the court.

In any event, even if we were to construe Officer Lopez's statements about the potential charges and sentence defendant could face if he confessed to committing the robbery as implied promises of leniency, the circumstances of the interrogation demonstrate that those statements did not cause defendant to make an involuntary confession. By the time Officer Lopez made the challenged statements, defendant had already admitted some incriminating details about the robbery. For example, he had admitted that he had decided to go to the Lincoln Plaza Hotel because he believed it was a "good target," that he had parked his car near the hotel, and that he had walked straight to the hotel after parking his car. Although defendant did not start to provide a more-detailed confession until shortly after Officer Lopez made the challenged statements, the record demonstrates that those statements were not a motivating factor in causing defendant to confess. Specifically, defendant told Officer Lopez at multiple points during the interrogation that he knew he was a two-strike offender and would likely face a third-strike sentence if he confessed to the robbery. Even after Officer Lopez stated that defendant potentially could face only a parole violation if he confessed and expressed doubt about whether defendant would qualify as a third-strike offender, defendant repeatedly corrected her, stating that he was certain he had been convicted of two strike offenses in the past and that he would likely receive a term

of 25 years to life in prison if he were convicted of the robbery. There is nothing in the record to demonstrate that Officer Lopez's statements caused defendant to believe he would receive more favorable treatment during his prosecution if he confessed to committing the robbery.

**4. There is no evidence that Officer Lopez used a pre-warning confession to extract defendant's post-warning confession.**

Finally, defendant contends Officer Lopez used a prior, pre-warning confession that defendant had made to other police officers before she interrogated him to induce him into admitting that he committed the robbery. Specifically, defendant asserts that Officer Lopez's remarks that defendant had been "cooperative" and "remorseful" with other police officers and that he had already admitted he committed the robbery demonstrate that he had been interrogated and had confessed to the robbery before he spoke to Officer Lopez. Defendant argues that because there is nothing in the record to demonstrate he was advised of his *Miranda* rights during that alleged prior interrogation, Officer Lopez improperly used a pre-warning confession to extract his incriminating statements during her interrogation and, as a result, those statements should have been excluded.

Defendant relies on *Missouri v. Seibert* (2004) 542 U.S. 600, 124 S.Ct. 2601, 159 L.Ed.2d 643 (*Seibert*), in which the United States Supreme Court disapproved of a police department's technique of interrogating suspects in successive, unwarned and warned phases to obtain a post-warning confession. (*Id.* at p. 604.) In that case, the department's protocol for conducting a custodial interrogation involved giving a suspect no *Miranda* warnings until the interrogation yielded a confession, even though the department knew that the initial confession would be inadmissible under *Miranda*. (*Id.* at pp. 604–605.) After the

defendant in that case initially confessed, the interrogating officer then advised the defendant of her *Miranda* rights and resumed questioning until she provided the same confession a second time. (*Ibid.*) The court held that the second confession repeated after a warning was inadmissible because it was the product of improper pre-warning interrogation. (*Id.* at p. 604.)

*Seibert* does not support defendant's argument because there is no evidence in this case that the police officers who allegedly questioned defendant before his interrogation with Officer Lopez "were 'following a policy of disregarding the teaching of *Miranda*.' [Citation.]" (*People v. Scott* (2011) 52 Cal.4th 452, 478 (*Scott*).) In fact, there is no evidence establishing that those officers questioned defendant about the robbery, let alone that anyone questioned him without first advising him of his *Miranda* rights, before he was interrogated by Officer Lopez.

The only evidence that defendant cites that could suggest a prior interrogation took place is Officer Lopez's remark that other officers had reported defendant was cooperative and remorseful before he was questioned by Officer Lopez as well as her statement during the middle of the interrogation that defendant had already admitted to committing the robbery. There is no evidence, however, that demonstrates in what manner defendant was cooperative with the other officers or why he was expressing remorse. Further, by the time Officer Lopez told defendant that he had admitted to committing the robbery, defendant had already made some incriminating statements to her about the crime, such as confirming that he went to the Lincoln Plaza Hotel on the morning of the robbery because it looked like a good target. Without additional evidence, we cannot determine whether defendant was subjected to impermissible pre-warning questioning by other police officers that could have rendered his

post-warning confession to Officer Lopez inadmissible. (See *Scott, supra*, 52 Cal.4th at p. 478.)

**5. Any error in admitting defendant's statements to Officer Lopez was harmless.**

Even if the trial court erred in admitting the statements defendant made to Officer Lopez during the August 8, 2015 interrogation, that error was harmless beyond a reasonable doubt because there was overwhelming evidence independent of those statements to support defendant's conviction. (See *People v. Johnson* (1993) 6 Cal.4th 1, 32 [the harmless beyond a reasonable doubt standard in *Chapman v. California* (1967) 386 U.S. 18, 24, 87 S.Ct. 824, 17 L.Ed.2d 705, applies when evaluating prejudice stemming from the admission of a coerced confession].)

Within minutes of Rodriguez reporting the robbery to the police, Officer Cota stopped defendant as he was driving only half a mile from the Lincoln Plaza Hotel. At the time of the stop, Defendant was carrying in his pocket the exact amount of money that had been stolen from the hotel, and the money was still in the same condition as it had been before it was taken from the hotel's cash register—that is, the money was still held together with a paper clip in the same manner the hotel used to store money in its registers. In addition, Rodriguez identified defendant by the pair of shoes that he was wearing when he was arrested, which matched the pair that were worn by the person who robbed the hotel. All of this evidence was obtained before defendant spoke to Officer Lopez. Based on this evidence, we conclude beyond a reasonable doubt that defendant would not have obtained a more favorable verdict had the trial court excluded the statements he made to Officer Lopez.

**DISPOSITION**

The judgment is affirmed.

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

LAVIN, J.

WE CONCUR:

EDMON, P. J.

STONE, 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.