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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 SEVEN

THE PEOPLE, Plaintiff and Respondent, v. BRIAN GEOVANNI QUINTANILLA, Defendant and Appellant.	B231296 (Los Angeles County Super. Ct. No. VA110907)

APPEAL from a judgment of the Superior Court of Los Angeles County, Robert J. Higa, Judge. Affirmed.

J. Kahn, 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, Lawrence M. Daniels and Lauren E. Dana, Deputy Attorneys General, for Plaintiff and Respondent.

Brian Geovanni Quintanilla was convicted following a jury trial of first degree murder. On appeal Quintanilla contends his incriminating statements to police officers should have been suppressed because they were obtained through custodial interrogation after he had invoked his right to counsel and were involuntary. He also contends the evidence of premeditation was insufficient to support the verdict. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *The Information*

Quintanilla was charged in an information with the willful, deliberate and premeditated murder of Jesus Ramos (Pen. Code, §§ 187, 189)[1] and the attempted murder of Rigoberto Barragan (§§ 187, subd. (a), 664). The information specially alleged Quintanilla had personally used a deadly or dangerous weapon, "to wit, [a] knife," in committing both offenses (§ 12022, subd. (b)(1)). Quintanilla pleaded not guilty and denied the special allegation.

2. *The Offenses*

According to the evidence at trial, Barragan was helping paint Ramos's living room when Quintanilla entered the home. Barragan was on a ladder unable to see Quintanilla; but he heard Quintanilla say, "Buenos dias" when he walked into the living room and heard Ramos respond, "Buenos dias." Suddenly, Barragan heard a scuffle. As he climbed down from the ladder, Barragan saw Quintanilla pull a knife from Ramos's chest. Ramos lay on the floor with blood pouring out of him. Quintanilla then attacked Barragan and tried jabbing him with the knife through the rungs of the ladder before fleeing.

Ramos was 79 years old. He died from a single stab wound that penetrated his heart and severed his coronary artery.

3. *Quintanilla's Statements to Police*

After Quintanilla's fingerprint was found at the scene, Huntington Park police officers asked Quintanilla whether he would agree to an interview at the police station.

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1 Statutory references are to the Penal Code.

Quintanilla was told at the outset he was not under arrest, he did not have to speak with the officers and he could leave any time he wanted. Quintanilla said he understood and wanted to cooperate.

At some point during the interview, after Quintanilla had repeatedly denied being in Ramos's house at any time, Detective Miguel Navia, who was conducting the interview along with Detective Gabriel Alpizar, took a break and then returned with Sergeant John Navarette. Navarette said he believed Quintanilla was involved in the murder and told him he was going to be arrested. Quintanilla was immediately advised of his right to remain silent, to the presence of an attorney, and, if indigent, to appointed counsel. (*Miranda v. Arizona* (1966) 384 U.S. 436 [86 S.Ct. 1602, 16 L.Ed.2d 694] (*Miranda*).) Quintanilla responded he understood his rights and wished to continue to talk to the detectives and Navarette.

Several minutes into the second part of the interview, Quintanilla said, "I want to talk to my lawyer first" before saying anything further. Sergeant Navarette responded, "That's fine. A lawyer won't let you talk to us, so if you want to say anything, you have to talk to us. If you want a lawyer, we'll give you a lawyer." Quintanilla reiterated his request to have a lawyer present. Navarette stated, "You're going to end up going to jail for murder. And if you want to talk [to] us and tell us the truth, you have to come to us. We can't go to you anymore because you asked for a lawyer, okay? That's cool. But you have to go to the jailer and then you have to ask for Detective Navia or Detective Alpizar, okay? The two detectives on the case. . . . [B]ut we can't talk to you anymore, all right?"

At this point Quintanilla said, "I've got some more questions." Sergeant Navarette responded, "We can't talk to you anymore. You want to make some voluntary statements?" Quintanilla said he did not, but wanted to know certain things, like where he would be stationed and what the charges would be. After he was informed the charge was murder, he would be held in custody at the jail and there would be no bail in a murder case, he asked, "How long will it take to get a lawyer?" Navarette responded, "You'll get some phone calls once we get done. Then you can make some notification.

When you go to court you'll get a public defender there, too." When Quintanilla inquired, "So can I get a public defender right now?" Navarette replied, "Yeah, but you have to make some phone calls when you go down to the jail." Detective Alpizar added, "You have to call for an attorney." Quintanilla then asked, "And he'll show up today?" Alpizar replied, "You get one appointed for you. What, today's Tuesday—probably on Thursday when you go to court." Quintanilla persisted, "Oh, so I won't be able to talk to one?" Navarette replied, "You can call your own attorney, but we're done, because you asked for an attorney, so we're done. You kind of cut it off, so we're done. We wanted to talk to you some more but we can't." Navarette concluded this second part of the interview, telling Quintanilla, "All right, . . . you take care and like I said, if you want to talk to the detectives, you have to ask for them okay?"

The interview resumed shortly thereafter without Sergeant Navarette. Before beginning this third part of the interview, Detective Navia stated, "While we were getting ready to take you over to the jail area, you were asking a bunch of questions . . . about your attorney, when you go to court and all that. I just want to clarify you're here to talk to us right now of your own free will; we didn't try to force you to talk or anything . . . ." Quintanilla confirmed he had requested to speak to the detectives about the case without an attorney present. The detectives then readvised Quintanilla of his rights under *Miranda*, and Quintanilla agreed to speak to them about the case.

Quintanilla explained he had gone to Ramos's house to ask for work; Ramos often hired people to work handyman jobs for him. He said hello to Ramos in Spanish after he walked in, and Ramos suddenly advanced on him with a knife in his hand. Quintanilla grabbed the knife from Ramos and stabbed him in the chest believing Ramos was going to attack him. He denied trying to stab Barragan. Quintanilla said he panicked as soon as he realized he had stabbed Ramos. He fled the scene and threw the knife away.

4. *Quintanilla's Pretrial Motion To Suppress His Statements*

Quintanilla filed a pretrial motion to suppress his statements to the detectives, contending they were the result of an interrogation that had improperly continued after he invoked his right to counsel in violation of his Fifth and Fourteenth Amendment rights.

The trial court denied the motion, concluding the detectives had honored Quintanilla's request for counsel by discontinuing the interrogation and their brief responses to Quintanilla's inquiries about a lawyer did not amount to the functional equivalent of interrogation. The court also ruled the statements were not involuntary.

5. *Quintanilla's Trial, Verdict and Sentence*

At trial the evidence focused on whether Ramos or Quintanilla had been the aggressor. Barragan testified he did not see a knife in Ramos's possession or on the living room table prior to Quintanilla's attack. Ramos's wife testified that, although she had not been home the morning of the murder, Ramos routinely used a large, distinctive knife to cut a papaya every morning; he always left the knife on the kitchen counter or in the sink when he was finished; and the knife had been missing since the murder. Police at the scene testified that a half-cut papaya was on the kitchen counter when they arrived, but the papaya knife could not be found.

Quintanilla testified on his own behalf, reiterating his statements to police that Ramos had advanced on him with a knife in his hand. He reacted to protect himself, inadvertently stabbing Ramos in the ensuing struggle. A clinical psychologist testified on Quintanilla's behalf, opining in accordance with a hypothetical involving similar facts that a young man would have felt threatened when confronted by a person with a knife in such close quarters and would have reacted to "fight" rather than "flee." The psychologist also opined the acts of discarding the weapon and failing to report the incident were consistent with someone experiencing acute stress disorder.

The jury was instructed as to first degree premeditated murder and second degree murder, lesser included offenses of voluntary and involuntary manslaughter, imperfect self defense and justifiable homicide. The jury found Quintanilla guilty of both murder and attempted murder, determined the murder was willful, deliberate and premeditated,

and found the special weapon-use allegation true as to both offenses. The court sentenced Quintanilla to an aggregate state prison term of 34 years to life.[2]

DISCUSSION

1. *The Trial Court Did Not Err in Denying the Motion To Suppress Quintanilla's Statements to Police*

a. *Governing law and standard of review*

Miranda admonitions (advising a suspect of his or her right to remain silent, to the presence of an attorney and, if indigent, to appointed counsel) must be given and an individual in custody must knowingly and intelligently waive those rights before being subjected to interrogation or its "functional equivalent." (*Rhode Island v. Innis* (1980) 446 U.S. 291, 300-301 [100 S.Ct. 1682, 64 L.Ed.2d 297]; *People v. Ray* (1996) 13 Cal.4th 313, 336.)

"Interrogation includes both express questioning and 'words or actions . . . the police should know are reasonably likely to elicit an incriminating response from the suspect.'" (*People v. Enraca* (2012) 53 Cal.4th 735, 752 (*Enraca*); accord, *People v. Dement* (2011) 53 Cal.4th 1, 26; see *Davis v. United States* (1994) 512 U.S. 452, 458 [114 S.Ct. 2350, 129 L.Ed.2d 362]; *Edwards v. Arizona* (1981) 451 U.S. 477, 485-486 [101 S.Ct. 1880, 68 L.Ed.2d 378]; *Rhode Island v. Innis, supra,* 446 U.S. at p. 301.)[3] Determining whether the words or actions of the police were likely to lead to an incriminating response focuses on the perception of the suspect, rather than the intent of the officers involved. (*Rhode Island,* at pp. 300-301; *People v. Huggins* (2006) 38 Cal.4th 175, 198.) Whether particular questioning or statements amount to interrogation or its functional equivalent depends on the "total situation," including the

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2 Quintanilla's sentence consisted of an indeterminate term of 25 years to life for first degree murder, plus one year for the weapon-use enhancement, plus an additional, consecutive seven-year term for attempted murder, plus one year for the weapon enhancement on that count.

3 California applies federal law to claims that a defendant's statements were elicited in violation of *Miranda*. (Cal. Const., art I, § 28; see *People v. Sims* (1993) 5 Cal.4th 405, 440; *People v. Boyer* (2006) 38 Cal.4th 412, 440, fn. 16.)

length, place and time of the questioning, the nature of the questions, the conduct of the police and all other relevant circumstances. (*People v. Terry* (1970) 2 Cal.3d 362, 383, disapproved on another ground in *People v. Carpenter* (1997) 15 Cal.4th 312, 382; *Edwards*, at p. 482.)

Once the right to counsel has been invoked, interrogation must cease. Questioning may resume only after the suspect initiates further discussions with the police and knowingly and intelligently waives the right he or she had invoked. (*Enraca*, *supra*, 53 Cal.4th at p. 753; *Connecticut v. Barrett* (1987) 479 U.S. 523, 527 [107 S.Ct. 828, 93 L.Ed.2d 920].) A suspect initiates further communication when he or she """speaks words or engages in conduct that can be 'fairly said to represent a desire' on his [or her] part 'to open up a more generalized discussion relating directly or indirectly to the investigation.'""" (*People v. Gamache* (2010) 48 Cal.4th 347, 385; *People v. San Nicolas* (2004) 34 Cal.4th 614, 642.) When a suspect invokes his or her right to counsel during custodial interrogation, any subsequent waiver of that right is presumed invalid; and the burden is on the People to show under the totality of the circumstances "both that the defendant reinitiated the discussions and that he knowingly and intelligently waived the right he had invoked." (*Gamache*, at p. 385; accord, *Oregon v. Bradshaw* (1983) 462 U.S. 1039, 1044-1045 [103 S.Ct. 2830, 77 L.Ed.2d 405]; *People v. Williams* (2010) 49 Cal.4th 405, 425.) "Only if the 'totality of the circumstances surrounding the interrogation' reveals both an uncoerced choice" to waive a protected right under *Miranda* "and the requisite level of comprehension may a court properly conclude the *Miranda* rights have been waived." (*Moran v. Burbine* (1986) 475 U.S. 412, 421 [106 S.Ct. 1135, 89 L.Ed.2d 410]; accord, *Williams*, at p. 425.)

"In reviewing *Miranda* issues on appeal, we accept the trial court's resolution of disputed facts and inferences as well as its evaluations of credibility if substantially supported, but independently determine from undisputed facts and facts found by the trial court whether the challenged statement was legally obtained." (*People v. Smith* (2007) 40 Cal.4th 483, 502; accord, *People v. Thomas* (2011) 51 Cal.4th 449, 476.)

b. *There was no Miranda violation; Quintanilla's statements were not involuntary*

Quintanilla contends the statements he made to Detectives Navia and Alpizar were the product of custodial interrogation that should have ceased after he unambiguously invoked his right to counsel. Contrary to Quintanilla's contention, however, the detectives did not continue to interrogate Quintanilla after he requested counsel at the end of the second interview session. Rather, they simply told him they could not talk to him anymore because he had asked for counsel and explained, if Quintanilla wished to discuss the case further, he would need to ask for them. Then, after briefly answering Quintanilla's preliminary questions about when a lawyer would be provided, the detectives ended the interview.

Quintanilla insists the detectives made false statements about the availability of a lawyer, which amounted to an unlawful continuation of the interrogation following invocation of his right to counsel and effectively coerced his waiver of his rights under *Miranda.* The Supreme Court rejected a strikingly similar contention in *Enraca, supra,* 53 Cal.4th 735, a case decided earlier this year. In *Enraca,* after the defendant had requested counsel during a custodial interview, the interrogating officer told the defendant the officer could not speak with him anymore. The defendant then inquired when he would be able to see an attorney; and the officer responded, "'[Y]ou can, when you go to court and get arraigned, one will be appointed to represent you. [T]hat's when you can see your lawyer. Now I suggest[] for the next 48 hours, that you deeply consider that[.] Is that clear[?]'" (*Enraca,* at p. 753.)

The defendant in *Enraca* argued the officer's statements after he had invoked his right to counsel constituted further interrogation in violation of *Miranda.* The Supreme Court disagreed, observing the officer had told the defendant he could not talk with him anymore because he had invoked his right to counsel. The officer's brief response to the defendant's subsequent question about when he could see his lawyer was not interrogation; it could not have been reasonably perceived by the suspect as one calling for an incriminating response. (*Enraca, supra,* 53 Cal.4th at p. 756.) The Court expressly rejected the argument that Quintanilla makes here, that the officer coerced the

defendant's waiver of his previously invoked right to counsel by leading him to believe he would have to wait, possibly several days, for an attorney to be appointed for him: "There is no merit to the defendant's claim [the officer] should have told him that he could consult with appointed counsel immediately. Defendant was correctly informed that he could acquire his own counsel or, if he was eligible, counsel would be appointed when he was arraigned. 'That is in fact when his right to counsel attached. [Citations.]' '*Miranda* does not require that attorneys be producible on call, or that police "keep a suspect abreast of his various options for legal representations."'" (*Enraca, supra,* 53 Cal.4th at p. 756; see also *People v. Smith, supra,* 40 Cal.4th at p. 483 [officer's response to defendant's question concerning the timing of the appointment of counsel was appropriate because the authorities are not required to have an attorney on call for the purpose of custodial interrogation].)

The other statements Quintanilla challenges also fall short of constituting improper interrogation. For instance, after invoking his right to counsel, Quintanilla asked detectives where he was going to "be stationed," for how long he would have to remain in custody, and what the charge was going to be. Sergeant Navarette told him the charge was murder; and Detective Navia, interpreting the question as relating to the availability of bail, commented there would be no bail in a murder case. The detectives also told Quintanilla they could not answer any more questions because he had invoked his right to counsel. We agree with Quintanilla that his questions about the charges and where he would be housed while in custody did not reinitiate discussions of the investigation so as to constitute a waiver of his *Miranda* rights and permit further questioning about the case. (See *People v. Gamache, supra,* 48 Cal.4th at p. 385; *People v. San Nicolas, supra,* 34 Cal.4th at p. 642.) However, the detectives' brief responses to those questions also did not amount to interrogation in violation of *Miranda*. (See *People v. Dement, supra,* 53 Cal.4th at p. 26 ["'Clearly, not all conversation between an officer and a suspect constitutes interrogation. The police may speak to a suspect in custody as long as the speech would not reasonably be construed as calling for an incriminating response.'"]; *People v. Clark* (1993) 5 Cal.4th 950, 985, disapproved on another ground in *People v.*

Doolin (2009) 45 Cal.4th 390, 421, fn. 22 [same]; see also *People v. Huggins, supra,* 38 Cal.4th at p. 198 [police statement to defendant that he was "a suspect" in murder investigation was not reasonably likely to elicit incriminating response and, therefore, was not interrogation in violation of *Miranda*]; *Clark*, at p. 985 [officer's casual estimate of possible penalties in response to defendant's question following defendant's invocation of right to counsel did not constitute improper interrogation].)

People v. Neal (2003) 31 Cal.4th 63, on which Quintanilla relies, is inapposite. In *Neal* the interrogating officer continued to question the defendant about the case after the defendant had invoked his right to counsel because, even though the officer knew the interrogation violated *Miranda,* he hoped to use the defendant's responses at trial to impeach him should he choose to testify. (*Neal*, at p. 74; see *People v. DePriest* (2007) 42 Cal.4th 1, 32 [voluntary confession obtained in violation of *Miranda* admissible for purposes of impeachment].) The Court held the defendant's statements were not only obtained in violation of *Miranda,* and thus were not admissible in the People's case in chief, but also were involuntary, and thus not admissible at all. The Court emphasized the officer's deliberate violation of *Miranda* during the course of the interrogation notwithstanding the defendant's repeated requests for counsel, coupled with the defendant's lack of access to food, drink or toilet facilities while in overnight custody, and concluded the officer's behavior effectively told the defendant that his right to silence and to counsel would not be honored until he confessed. (*Neal*, at p. 83.)

Quintanilla's reliance on *People v. Esqueda* (1993) 17 Cal.App.4th 1450 is similarly misplaced. There, the defendant maintained his inculpatory statements should have been suppressed because they were elicited without the benefit of *Miranda* rights. The People argued the defendant was not in custody at the time he made the statements. The Court of Appeal disagreed, finding a lack of evidence the defendant had willingly agreed to go with police to the station and would have reasonably believed he was free to leave. In addition to finding the interrogation was custodial and thus subject to the protections of *Miranda*, the Court of Appeal also concluded the confession was involuntary under the totality of the circumstances: Police engaged in interrogation for

more than eight hours, in which the defendant received no food and little, if any, respite "from the constant police pressure to confess." (*Esqueda,* at p. 1485.) In addition, the officers used lies and promises of more lenient treatment to obtain a confession, effectively telling the defendant he would not have to go to prison if he told them the killing was an accident. The court held the confession was the product of "outrageous police behavior" in which the police took advantage of the defendant's exhaustion, emotions and minimal education to overcome his resistance and induce an involuntary confession. (*Id.* at pp. 1484; see *id.* at pp. 1486-1487.)

Here, in contrast, there was no evidence of any oppressive conditions of interrogation.[4] Quintanilla was neither deceived by false promises nor coerced by oppressive conditions into waiving his *Miranda* rights. (See *People v. Clark, supra,* 5 Cal.4th at p. 985 [officer's response concerning potential penalties "contained no suggestion that if defendant confessed he would receive more favorable treatment, or that if he did not confess the penalties would be more harsh"].) Considering the totality of the circumstances, the trial court did not err in concluding Quintanilla's statements were neither the product of unlawful interrogation nor involuntary.

2. *Substantial Evidence Supports Quintanilla's Conviction of First Degree Murder*

Quintanilla contends there is insufficient evidence to support his conviction of first degree murder on a premeditation theory. (See § 189 [any murder that is "willful, deliberate and premeditated" is murder of the first degree].)[5] "A verdict of deliberate,

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4 In arguing at the suppression hearing that Quintanilla's confession was involuntary, Quintanilla's counsel focused exclusively on the colloquy between the detectives and Quintanilla concerning the timing of the appointment of counsel. No evidence was presented as to any oppressive conditions during the custodial interrogation. As we have explained, nothing about the detectives' statements concerning the timing of the appointment of counsel made Quintanilla's subsequent waiver of his *Miranda* rights involuntary. (See *Enraca, supra,* 53 Cal.4th at p. 756.)

5 To assess a claim of insufficient evidence in a criminal case, "we review the whole record to determine whether *any* rational trier of fact could have found the essential elements of the crime or special circumstances beyond a reasonable doubt. [Citation.]

and premeditated first degree murder requires more than a showing of intent to kill. [Citation.] 'Deliberation' refers to careful weighing of considerations in forming a course of action; 'premeditation' means thought over in advance. [Citations.] 'The process of premeditation and deliberation does not require any extended period of time. "The true test is not the duration of time as much as it is the extent of the reflection. Thoughts may follow each other with great rapidity and cold, calculated judgment may be arrived at quickly . . . ."'" (*People v. Koontz* (2002) 27 Cal.4th 1041, 1080.)

In *People v. Anderson* (1968) 70 Cal.2d 15, the Supreme Court identified three categories of evidence relevant to deciding the issue of premeditation and deliberation: (1) planning activity, (2) motive, and (3) manner of killing. (*Id.* at pp. 26-27; accord, *People v. Steele* (2002) 27 Cal.4th 1230, 1249.) The list was not intended to be exhaustive or require that the identified factors appear in any specific combination or be afforded any particular weight. (*People v. Pride* (1992) 3 Cal.4th 195, 247; *People v. Perez* (1992) 2 Cal.4th 1117, 1125.) The *Anderson* factors are "descriptive," rather than "normative," and are not a "sine qua non" to finding first degree premeditated murder. (*People v. Memro* (1995) 11 Cal.4th 786, 863-864; accord, *People v. Bolin* (1998) 18 Cal.4th 297, 331; see *People v. Steele*, *supra*, 27 Cal.4th at p. 1249 [*Anderson* factors are simply "intended to guide an appellate court's assessment whether the evidence

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The record must disclose substantial evidence to support the verdict—i.e., evidence that is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] In applying this test, we review the evidence in the light most favorable to the prosecution and presume in support of the judgment the existence of every fact the jury could reasonably have deduced from the evidence. [Citation.] 'Conflicts and even testimony [that] is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends. [Citation.] We resolve neither credibility issues nor evidentiary conflicts; we look for substantial evidence. [Citation.]' [Citation.] A reversal for insufficient evidence 'is unwarranted unless it appears "that upon no hypothesis whatever is there sufficient substantial evidence to support"' the jury's verdict." (*People v. Zamudio* (2008) 43 Cal.4th 327, 357.)

supports an inference that the killing occurred as the result of preexisting reflection rather than unconsidered or rash impulse"].)

In the case at bar, the coroner testified a large-bladed knife had been used in the attack; and Ramos's wife testified a large-bladed papaya knife, typically in the sink or on the kitchen counter, had been missing since the murder. Barragan testified the knife was not in the living room where the men had been working, and he had not seen Ramos with a knife before the attack. From this evidence the jury could reasonably infer Quintanilla had entered the house, retrieved the papaya knife from the kitchen sink or counter and, at that point, formed his plan to murder Ramos. This evidence, coupled with the manner of killing (a single stab wound through Ramos's heart), amply supported the jury's verdict. (See *People v. Perez*, *supra*, 2 Cal.4th at p. 1122 [sufficient evidence of premeditation where the defendant surreptitiously entered victim's house, obtained steak knife from kitchen and used it to stab victim]; *People v. Nazeri* (2010) 187 Cal.App.4th 1101 [retrieval of knife from upstairs bedroom minutes prior to killing the victim downstairs was sufficient evidence of premeditation and deliberation to support verdict of first degree murder]; see also *People v. Morris* (1959) 174 Cal.App.2d 193, 197 [stab wound to heart, coupled with lack of an any spoken words between defendant and victim consistent with jury's conclusion killing was premeditated and not result of "'rash impulse hastily executed'"].)

DISPOSITION

The judgment is affirmed.

PERLUSS, P. J.

We concur:

WOODS, J. ZELON, J.