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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 THREE

THE PEOPLE, Plaintiff and Respondent, v. IGNACIO PEREZ, Defendant and Appellant.	B263646 (Los Angeles County Super. Ct. No. BA374668)

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

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

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Steven E. Mercer and Kathy S. Pomerantz, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Ignacio Perez appeals the judgment entered following his conviction by jury of second degree murder (Pen. Code, § 187, subd. (a)),[1] with findings that he personally used a firearm, personally and intentionally discharged a firearm, and personally and intentionally discharged a firearm causing death (§ 12022.53, subds. (b), (c) & (d)). We affirm.

FACTUAL SUMMARY

A. Prosecution Evidence

1. The shooting

Appellant lived in an apartment at 4821 St. Charles Place with several roommates. On August 5, 2010, around 4:00 or 5:00 p.m., appellant's cousin, Maximo Sanchez, arrived at the apartment for a visit. Several men were in the living room, and appellant was in his bedroom with Maria Reyes. After awhile, appellant came out of his bedroom and introduced Reyes as his girlfriend. Sanchez had seen Reyes at the apartment two or three times before.

Appellant and Reyes returned to his bedroom and closed the door, while Sanchez and the other men remained in the living room. Sanchez could hear music coming from appellant's bedroom. After several hours, a male stranger entered the apartment and walked directly into appellant's bedroom.[2]

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[1] Unless otherwise indicated, all further statutory references are to the Penal Code.

[2] The evidence suggested that Reyes worked as a paid escort and the stranger was her pimp. The police never located or identified the stranger.

After the stranger entered appellant's bedroom, Sanchez heard a commotion. Sanchez went to the bedroom to investigate, and he found the stranger and Reyes searching through the room. The stranger said they were looking for cell phones, and Reyes said appellant had hidden her phone. Appellant appeared to be upset and told Reyes and the stranger to leave. Sanchez walked the stranger out of the apartment and onto the street, but Reyes stayed in the bedroom.

While standing outside with the stranger, Sanchez heard two gunshots in appellant's bedroom. After a pause of about 30 to 40 seconds, Sanchez heard a third gunshot. The stranger left the area, and Sanchez went back inside to see what happened. In appellant's bedroom, Sanchez found Reyes bleeding on the floor. The bedroom's back door was open, and appellant was gone. Sanchez told one of appellant's roommates to call for an ambulance, then Sanchez left the apartment because he was scared.

Uniformed officers from the Los Angeles Police Department arrived at appellant's apartment around 11:00 p.m., and detectives arrived the following morning around 1:20 a.m. Detectives Paul Funicello and Frank Carrillo were assigned to the case. The police found Reyes lying dead on the floor of appellant's bedroom. She was on her left side, near the bedroom door, with a pillow under her head. The police detected three gunshot wounds on Reyes's body, one in her torso, one in her nose, and one in her right eye. There was also an exit wound in Reyes's lower back.

While inspecting appellant's bedroom, the police found two holes in the bed mattress, which were consistent with gunshots. They also located 4 nine-millimeter cartridge casings, a fired bullet in the pillow under Reyes's head, and a fired bullet in the closet. They found a bullet strike mark on the closet door about two to three feet above Reyes's head.

The police found a suitcase in the hall closet, which contained paperwork with appellant's name and live rounds of nine-millimeter ammunition. Some of the live ammunition was the same brand as the four spent casings found in appellant's bedroom. Ballistics evidence revealed that the two fired bullets were discharged by the same gun, and the four spent casings were discharged by the same gun. Only two types of guns could have fired the bullets, one of which was a Smith & Wesson handgun.

2. Appellant's trip to Mexico and statement

In the early morning hours following the shooting, appellant called his uncle Anastasio Perez Gomez. Appellant told his uncle that he had a "big problem" and asked his uncle to drive him to Tijuana. Gomez refused, and appellant asked his uncle to bring him a jacket and $200. Gomez agreed to do so, but he was detained by the police before he could help appellant.

Sometime later, appellant fled to Mexico. In February 2012, the police learned that appellant had been arrested in Mexico, and he was extradited to the United States. Appellant arrived in Los Angeles on July 18, 2012.

On the day appellant returned to Los Angeles, he was interviewed by Detectives Funicello and Carrillo. The interview took place at a police station and lasted about two hours. It was recorded and transcribed; the video recording was played for the

jury, and the transcript was included in the record. During the trial, there was evidence that appellant made a statement about the case to the Mexican authorities before he was returned to the United States, but the detectives were not aware of this and appellant said nothing about the statement during his interview.

The interview was conducted in English, and Funicello asked most of the questions. Early on, Funicello asked about the flight from Mexico and appellant said it took three hours. The detective asked if appellant was okay, and he responded "yes," although he said he sometimes had panic or anxiety attacks. Funicello gave appellant a full advisement of his *Miranda* rights,[3] and appellant stated that he understood his rights and then proceeded with the interview. Funicello testified that during the interview appellant appeared "somewhat subdued and maybe humbled, and maybe slightly nervous."

Funicello asked appellant if he knew why he was there, and appellant responded, "Because somebody died in my apartment." During the interview, appellant readily admitted that he shot Reyes.

Appellant told the detectives that he became romantically involved with Reyes about a year before he shot her. He gave Reyes money when they got together, and they both drank heavily during their dates. On the day of the shooting, appellant bought a large amount of beer, and Reyes came to his apartment around 3:00 or 4:00 p.m. They stayed in his bedroom, listening to music and getting drunk.

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[3] *Miranda v. Arizona* (1966) 384 U.S. 436, 473 (*Miranda*).

Appellant said he had a handgun in his bedroom that belonged to a friend. Reyes played with the gun, so appellant removed the magazine to prevent it from being fired. When appellant returned from the bathroom, he noticed that Reyes had re-inserted the magazine. Appellant took the gun away from Reyes, but in the process the gun discharged and fired two shots into the bed. After gaining control of the gun, appellant placed it in the closet.

Appellant said that he and Reyes continued to drink beer and listen to music. Appellant fell asleep, and when he awakened he found a man searching through his room. Appellant suspected that Reyes had let the man into the apartment so he could steal from appellant, and he believed that $700 had been taken from him. Appellant confronted the man, and the man left the bedroom.

Appellant told the detectives that he and Reyes argued after the man left. Reyes yelled at him and said the man was "somebody special" and "better than you," while appellant was "nothing." The gun had been taken from the closet and was lying on the bed, next to Reyes. Appellant was "like furious" because his money was gone and Reyes was yelling at him, so "I just grabbed [the gun] and shot her."

Appellant said he shot Reyes twice, once in the chest and once in the face. Reyes was standing when appellant shot her the first time, and she fell into a chair and he shot her again. Her body slid off the chair and fell to the floor.

Appellant said he quickly left the apartment with the gun and his cell phone. He walked to Olympic Boulevard, where he called his uncle and asked for a jacket and a ride to Tijuana. Appellant's uncle told him to stay overnight with someone else

and he would help him the next day. Appellant took a bus and ended up in MacArthur Park, where he threw the gun into the lake.

Appellant said the day following the shooting he took some kind of taxi from Los Angeles to Tijuana. From Tijuana, he took a bus to Guajaca, Mexico, where he stayed with family. Appellant said he wanted to give himself up, but needed to see his grandfather, who was very sick. He told his family members that " 'I escaped from America because I did something bad,' " and he later told his grandfather that he shot his girlfriend because he was " 'mad.' "

3. Additional evidence

A police dive team searched the lake at MacArthur Park and located a blue steel Smith & Wesson nine-millimeter semi-automatic handgun in the spot where appellant indicated he had thrown the gun. The parties stipulated that Reyes died from three gunshot wounds to her body, two to her face and one to her torso. The coroner estimated that the gunshots into Reyes's face had been fired from about two to four feet away.

B. Defense Evidence

1. Appellant's testimony

Appellant testified in his own behalf, giving an account of the shooting different from his statement to the detectives. Appellant said he and Reyes liked to spend time together at his apartment. They stayed in his bedroom, drinking beer, playing video games, and listening to music. Appellant gave Reyes about $200 each time they got together, and he estimated that he paid her $1,500 to $2,000 over the course of their relationship. After Reyes's visits, appellant often noticed that things were missing

from his bedroom, such as money, electronic devices, and video games.

On August 5, 2010, Reyes called appellant and asked to get together. Appellant bought a 24-case of beer, and Reyes arrived at appellant's apartment around 12:00 or 1:00 p.m. Reyes began drinking and appellant joined in. They consumed all 24 beers, and appellant bought another case. Appellant estimated that he and Reyes each drank about 20 beers that day.

Sometime during the afternoon, Reyes began playing with appellant's gun. He removed the magazine, but she reinserted it while he was in the bathroom. While playing with the gun around 3:00 or 4:00 p.m., Reyes fired it twice into appellant's bed. Appellant was concerned that the police might come or Reyes might shoot him, so he took the gun away and removed the magazine again. Appellant then put the gun in his clothes drawer.

Appellant was "very drunk" and fell asleep. When he woke up, he saw a stranger looking through his closet and bedroom. Appellant asked Reyes who the man was, but she did not respond. Appellant's cousin Maximo Sanchez came into the bedroom; appellant told the stranger to leave, and Sanchez walked him out.

Reyes remained in the bedroom, and she and appellant argued. Appellant checked his closet and believed that $700 was missing. He accused Reyes and the stranger of taking his money, and his accusation made Reyes angry. The gun was on appellant's bed, and Reyes grabbed it, pointed it at appellant's chest, and asked, " 'Are you afraid of dying?' " Appellant told Reyes to put the gun down, but she refused and pulled back the slide to load a bullet into the chamber. Appellant was afraid

Reyes was going to shoot him, so he grabbed the gun and they struggled over it.

While wrestling with the gun, it discharged in Reyes's hand. Appellant and Reyes fell, and he ended up with the gun in his hand. Reyes fell sideways and appeared to lunge for the gun. Appellant was scared, so he shot her "several times." He did not aim the gun but "just shot it quickly." Reyes fell into a chair and remained there after she was shot.

Appellant "freaked out," grabbed the gun and his cell phone, and fled the apartment. Around 9:30 or 10:00 p.m., appellant called his uncle, told him he had a "problem" and asked for his help. The next day appellant disposed of the gun and traveled to Mexico. Appellant returned to his home town in Mexico and lived there nearly two years.

Appellant was arrested for drunkenness, and the police took him to a town called Tlacolula. In Tlacolula, the police said appellant was wanted in the United States and told him " 'we know you killed your lady.' " The police questioned appellant and tried to get him to admit that he killed Reyes. When appellant denied this, the police beat and kicked him. Appellant eventually told the police that he shot Reyes during a struggle over the gun, but they did not believe him. The police beat him some more, dunked his head into a toilet, and gave him electric shocks. The police insisted that appellant had killed Reyes out of anger and jealousy, and he ultimately agreed with their story to avoid more torture.

Appellant was ultimately taken to a prison in Mexico City. In the prison, he was physically and mentally tortured and forced to pay a bribe to the Mexican authorities. Appellant was eventually extradited to the United States and returned to Los Angeles.

When he arrived in Los Angeles, appellant was afraid the police would give him the same treatment that he received in Mexico. He was "very, very afraid" of Detectives Funicello and Carrillo, and thought they would torture him too. Appellant thought the detectives knew of his confession to the Mexican police, so he told them the same story. Appellant did so because he thought the detectives would torture him if he departed from the story he told in Mexico. On the other hand, appellant admitted that the detectives were "very nice," "polite" and "not aggressive."

2. Expert testimony

Appellant called Dr. Francisco Gomez, a clinical psychologist, as an expert witness. Dr. Gomez conducted two interviews with appellant, performed standard diagnostic tests, and reviewed materials from this case, such as police reports, appellant's interview with Los Angeles detectives, and witness interviews. He concluded appellant suffered from major depressive disorder, anxiety disorder, drug abuse, and avoidant personality disorder. Dr. Gomez also concluded that appellant had a problem making decisions and thinking abstractly, and he processed information slowly in new situations.

Appellant told Dr. Gomez he was tortured in Mexico, much as he testified in court. Dr. Gomez believed that appellant's psychological disorders made him vulnerable to suggestibility by the police and inclined him toward avoiding confrontation and

responding compliantly. When he was given a hypothetical question based on facts similar to appellant's testimony, Dr. Gomez stated that a person with appellant's disorders, who had been tortured during interrogation by the police in Mexico, and who was returned to the United States for further questioning by the police, would be at risk for "suggestibility [and] going along with what's being said."

C. Prosecution Rebuttal

During rebuttal, Deputy Medical Examiner Vadims Poukens reviewed the autopsy report for Reyes and explained several of its findings. Dr. Poukens noted that Reyes's body did not have any evidence of soot or stippling marks, and the absence of soot and stippling on gunshot wounds indicated that the gun had been fired more than two feet away from the victim.

Dr. Poukens noted that Reyes suffered three gunshot wounds. One bullet entered near her right eye and lacerated the brain and brain stem. This wound was immediately incapacitating, causing immediate unconsciousness and death within a few seconds. Dr. Poukens said Reyes could not have moved after receiving this wound.

Dr. Poukens believed the other two wounds would not have caused immediate incapacitation. One entered the right side of Reyes's nose, and exited through her left ear. The other entered Reyes's right flank and exited through her lower back.

Overall, Dr. Poukens opined that Reyes died within a few seconds, and no more than one minute, after the three wounds were inflicted, "meaning that she did not survive long after these gunshot wounds, so she most likely was able to take just a few breaths after she was shot."

DISCUSSION

Appellant makes one claim on appeal. He contends his conviction must be reversed because the Los Angeles police failed to advise him of his right to speak with a representative of the Mexican Consulate, as provided by the Vienna Convention on Consular Relations, 21 U.S.T. 77 (Vienna Convention), and Penal Code section 834c (Section 834c).

Specifically, appellant asks this court to rule that the trial court erred in denying the motion to suppress his July 18, 2012 statement to the Los Angeles police; alternatively, he asks this court to direct "an evidentiary hearing to determine whether the evidence presented, and the assistance provided, by the Mexican Consulate, had it been properly notified of appellant's case, would have (1) persuaded the trial court to exclude appellant's police interrogation or (2) likely have resulted in a verdict more favorable to appellant (or both)."

A. Relevant Proceedings

Appellant filed a written motion in limine to suppress his July 18, 2012 statement to the Los Angeles police. The motion was made on the sole ground that appellant's statement was obtained in violation of his rights under *Miranda*. The motion cited the Vienna Convention and Section 834c, arguing that the failure to inform appellant of his right to speak with a representative of the Mexican Consulate contributed to the *Miranda* violation. The motion was heard before jury selection commenced.

At the hearing on the motion, appellant presented one witness: Dr. Francisco Gomez. Just as he did later during trial, Dr. Gomez explained that he had interviewed and conducted a standard psychological evaluation of appellant, finding various

psychological disorders. Dr. Gomez believed that appellant's mental condition and background could have affected the voluntariness of his confession to the Los Angeles detectives. He explained that someone such as appellant could acquiesce to authority figures and not assert his true beliefs. Dr. Gomez felt that appellant was worried that the Los Angeles detectives knew about his confession to the Mexican authorities, and thought something bad would happen if he did not tell the same story to the detectives. For these reasons, Dr. Gomez concluded the voluntariness of appellant's confession was questionable, because "he was vulnerable to suggestion and coercion."

The prosecutor did not call any witnesses at the hearing. He asked the court to review appellant's July 18, 2012 interview with the detectives, particularly the exchange in which appellant was advised of his *Miranda* rights. During that portion of the interview, the following was said: "Detective Funicello: Real quick. Before we begin, I got to advise you of your rights. Okay? You have the right to remain silent. Do you understand? [¶] Ignacio Perez: Yes, sir. [¶] Detective Funicello: Anything you say may be used against you in court. Do you understand? [¶] Ignacio Perez: Yes. [¶] Detective Funicello: You have the right to the presence of an attorney before and during any questioning. Do you understand? [¶] Ignacio Perez: Yes. [¶] Detective Funicello: If you cannot afford an attorney, one will be appointed for you free of charge before any questioning if you want. Do you understand? [¶] Ignacio Perez: Yes, sir." (Capitalization omitted.)

When the court invited argument, defense counsel first addressed *Miranda*. He claimed the detectives failed to give proper *Miranda* warnings, and appellant failed to understand the

rights that he gave up. Defense counsel then addressed the voluntariness of appellant's statement. He claimed the statement was not voluntary or reliable, because the detectives suggested that appellant shot Reyes in anger or jealousy and appellant adopted their suggested version of the crime.

The prosecutor responded by arguing the same two points. He said the detectives read appellant his rights from a *Miranda* card, and the words of the warning met the requirements of the law. The prosecutor claimed that appellant exhibited understanding of his *Miranda* rights, because he said he understood, and he demonstrated appropriate understanding and made articulate responses throughout the interview. And the prosecutor argued that appellant's statement was not involuntary or coerced, pointing to the low-key, non-threatening tenor of the interview, and the absence of any evidence supporting Dr. Gomez's opinions.

In rebuttal, defense counsel acknowledged that Dr. Gomez did not verify whether appellant had been tortured in Mexico, and expressed uncertainty as to whether Dr. Gomez could do so. Defense counsel argued that the detectives did not clearly advise appellant of his rights, and "in this situation Mr. Perez felt that he had to agree with what the police said." The court took the matter under submission and promised a ruling the next day.

The court addressed the motion on the following morning. The court stated it had watched the videotaped interview and read the transcript. The court found the video "highly probative" of appellant's ability to speak English and communicate with the detectives. The court noted that the prosecution had the burden of proof on all issues, and it stated the principal part of its ruling as follows: "[T]he court finds that the defendant was informed

clearly and unequivocally and fully and unambiguously of his *Miranda* rights. [¶] No stress was immediately apparent in his interactions with the detectives, and as I alluded to earlier, I did not observe communication or language difficulty, at least that was apparent in a review of the recording. I didn't see threats or promises of leniency. His intelligence and understanding appeared at least average, perhaps better. No deficit was seen by the court. [¶] Whatever effect there may have been on him from his experience with Mexican law enforcement officials would be speculative. I was not immediately able to see any effect on him from that interaction, if indeed there was interaction with Mexican law enforcement officials of a substantive nature."

The court added that appellant did not expressly waive his *Miranda* rights, but he was fully informed of his rights and elected to go forward with the interview. Under prevailing law, this constituted an implied *Miranda* waiver that is sufficient and fully effective.[4] The court found that appellant's waiver was made knowingly, intelligently, and voluntarily, and it denied the motion.

B. Appellant's Motion was Properly Denied

What is most striking about the trial court's hearing on appellant's motion to suppress is the fact that there was no mention whatsoever of the Vienna Convention or Section 834c. No one – not defense counsel, the prosecutor, or the trial court – said one word about either provision. During the course of a

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[4] The trial court cited *Berghuis v. Thompkins* (2010) 560 U.S. 370, 384, where the Supreme Court held: "The prosecution therefore does not need to show that a waiver of *Miranda* rights was express. An 'implicit waiver' of the 'right to remain silent' is sufficient to admit a suspect's statement into evidence."

hearing that extended over two days, the parties argued about the sufficiency of the *Miranda* warning given to appellant and the voluntariness of his statement to the detectives. But that was all they addressed.

In his written motion, appellant moved "to suppress the claimed admission or confession of the defendant on the ground that admission of that statement would violate [*Miranda v. Arizona*]." No other grounds were stated.

Appellant's points and authorities cited the Vienna Convention and Section 834c, but it did so in an argument based on *Miranda*. The argument was entitled, "THE POLICE HAD A DUTY TO ADVISE MR. PEREZ THAT HE HAD THE RIGHT TO SPEAK WITH A REPRESENTATIVE OF THE MEXICAN CONSOLATE BEFORE QUESTIONING. THEY FAILED TO ADVISE HIM OF THIS RIGHT, IN VIOLATION OF [*MIRANDA*]." (Underscoring omitted.) Appellant cited the Vienna Convention and Section 834c for the proposition that a foreign national arrested or detained in the United States "must be given notice 'without delay' of their right to have an embassy or consulate notified of their arrest." (Boldface omitted.) And appellant argued: "Here the Police knew that Mr. Perez was a foreign national of Mexico because they extradited him from Mexico. They had a duty to advise him of his right, and failed to do so." At the conclusion of his motion, appellant stated that "[f]or these reasons," the court should suppress his confession.

This was the entirety of appellant's presentation to the trial court. In this appeal, appellant argues that the trial court should have suppressed his July 18, 2012 statement because the detectives failed to advise him of his right to consular notification under the Vienna Convention and Section 834c. Appellant has

tried to re-characterize the trial proceedings to suggest that the trial court considered and ruled on this claim, but it was never addressed by the court below.

Respondent has therefore argued that appellant has forfeited the claim he now asserts on appeal. But a motion to suppress need not be overly detailed. "[W]hen defendants move to suppress evidence, they must set forth the factual and legal bases for the motion, but they satisfy that obligation, at least in the first instance, by making a prima facie showing . . . ." (*People v. Williams* (1999) 20 Cal.4th 119, 136 (*Williams*).) "Defendants need only be specific enough to give the prosecution and the court reasonable notice." (*Id.* at p. 131.) Thus, even exceedingly brief motions, like the one in this case, are usually sufficient to shift the burden to the prosecution. (See, e.g., *People v. Romeo* (2015) 240 Cal.App.4th 931, 935, 939.)

What a motion to suppress lacks in depth, however, it should provide in clarity. (*Williams*, *supra*, 20 Cal.4th at p. 135 [The "determinative inquiry in all cases is whether the party opposing the motion had fair notice of the moving party's argument and fair opportunity to present responsive evidence."].) At minimum, a defendant may not "lay a trap for the prosecution by remaining completely silent until the appeal about issues the prosecution may have overlooked." (*Id.* at p. 131.) Therefore, when assessing whether a suppression issue was properly raised below, our touchstone is " 'elemental . . . fairness in giving each of the parties an opportunity adequately to litigate the facts and inferences relating to the adverse party's contentions.' " (*Id.* at p. 136.)

Here, appellant's motion cited the Vienna Convention and Section 834c, noted the police had a duty to advise him of his rights under those provisions, and failed to do so. "For these reasons," appellant then asks the court not to allow the People to introduce appellant's statement to the police. To be sure, appellant does not cite any case authority to support his contention that his confession should be suppressed for violation of those provisions. And, as noted, appellant never mentioned those provisions in argument before the trial court.

We need not decide, however, whether appellant forfeited his challenge on appeal. As we will explain, suppression of appellant's statement is not a proper remedy for violations of the Vienna Convention and Section 834c, and appellant's alternative remedy is neither clear nor warranted.

1. Suppression of appellant's statement is not a proper remedy

Appellant's claim also fails on the merits. He contends his July 18, 2012 statement to the Los Angeles police must be suppressed because the detectives failed to advise him of his right to consular notification under the Vienna Convention and Section 834c. Even when courts have found a violation of the law, this remedy has been consistently rejected on the federal and state level.

The Vienna Convention, drafted in 1963 and signed by both the United States and Mexico, sets forth a number of circumstances requiring consular intervention or notification. Article 36 addresses communication between an individual and his consular officers when the individual is arrested or detained by the police in a foreign country. An arrestee has the right to ask the police to give notice of the arrest to the consulate of his or

her home county. (Vienna Convention, art. 36(1)(b), 21 U.S.T. at p. 101.) And the police have a duty to notify the arrestee of his or her right to make this request. (Vienna Convention, art. 36(2), 21 U.S.T. at p. 101.)

In *Sanchez-Llamas v. Oregon* (2006) 548 U.S. 331 (*Sanchez-Llamas*), the Supreme Court held that a violation of Article 36 does not require suppression of a criminal defendant's statements to the police. The petitioners were foreign nationals who had been arrested in the United States and made incriminating statements to the police. Because they had not been advised of their rights under the Vienna Convention before the statements were made, the petitioners argued that their statements should have been suppressed and their convictions reversed. The Supreme Court rejected their arguments.

The court held that the Vienna Convention itself does not mandate suppression or any other specific remedy, but leaves implementation to domestic law. (*Sanchez-Llamas, supra*, 548 U.S. at pp. 343-44.) The court declined to impose a suppression remedy under federal constitutional law for various reasons, including the unsuitability of suppression as a remedy for the failure to give notice of consular rights. (*Id.* at p. 349.)

The court explained that a suppression remedy is inappropriate because a violation of the right to consular notification "is at best remotely connected to the gathering of evidence" and "has nothing whatsoever to do with searches or interrogations." (*Sanchez-Llamas, supra*, 548 U.S. at p. 349.) While suppression is logically related to the unreliability of coerced confessions, the court explained "[t]he failure to inform a defendant of his Article 36 rights is unlikely, with any frequency, to produce unreliable confessions." (*Ibid.*) The court therefore

held that "neither the Vienna Convention itself nor our precedents applying the exclusionary rule support suppression of [a defendant's] statements to police." (*Id.* at p. 350.)

The California Supreme Court followed *Sanchez-Llamas* in *People v. Enraca* (2012) 53 Cal.4th 735 (*Enraca*), where a Philippine national was not informed of his right to have his consulate notified of his arrest. The court applied the logic of *Sanchez-Llamas* and held the violation of the defendant's consular rights did not require suppression of his statement to the police. (*Id.* at pp. 756-758; see also *In re Martinez* (2009) 46 Cal.4th 945, 963-964, and *People v. Mendoza* (2007) 42 Cal.4th 686, 709-710 & fn. 13 [both discussing *Sanchez-Llamas*].)

In a decision issued before *Sanchez-Llamas*, the Court of Appeal addressed the Vienna Convention in *People v. Corona* (2001) 89 Cal.App.4th 1426 (*Corona*). The defendant was a Mexican national who made incriminating statements to the police but did not receive a consular advisement as provided by Article 36 of the Vienna Convention. The trial court denied her motion to suppress the statements, and the Court of Appeal affirmed. Just as the Supreme Court later held in *Sanchez-Llamas,* the court held that "[e]xclusion is not a remedy for violations of article 36 and the court correctly denied Corona's suppression motion that was based on article 36." (*Corona,* at p. 1430.)

Appellant's reliance on Section 834c does not change the result. Section 834c provides in relevant part: "In accordance with federal law and the provision of this section, every peace officer, upon arrest and booking or detention for more than two hours of a known or suspected foreign national, shall advise the foreign national that he or she has a right to communicate with

an official from the consulate of his or her country . . . ." (Section 834c, subd. (a)(1).) Section 834c contains no provision indicating that the Legislature intended for suppression of evidence to be a remedy for violation of the statute. It was expressly enacted to implement the provisions of the Vienna Convention (*id*., subd. (b) - (d)), it provides directions "[i]n accordance with federal law" (*id*., subd. (a)), and there is nothing which suggests a different result from the holdings in *Sanchez-Llamas, Enraca,* and *Corona.*

Section 834c does not support suppression of appellant's July 18, 2012 statement. But in any event, "[w]ith the passage of Proposition 8, we are not free to exclude evidence merely because it was obtained in violation of some state statute or state constitutional provision. ' "Our state Constitution . . . forbids the courts to order the exclusion of evidence at trial as a remedy for an unreasonable search and seizure unless that remedy is required by the federal Constitution as interpreted by the United States Supreme Court." ' [Citations.]" (*People v. McKay* (2002) 27 Cal.4th 601, 608; accord, *People v. Fletcher* (1996) 13 Cal.4th 451, 465 [applying Proposition 8 to confessions].)[5]

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[5] Appellant has requested judicial notice of two legislative reports for Senate Bill No. 287 (1999-2000 Reg. Sess.), which was enacted as Section 834c, as well as an amicus curiae brief filed during the Supreme Court's review in *Sanchez-Llama.* There was no opposition, and the request is granted. We have considered these materials, but they provide no basis for changing the views we have expressed.

2. Appellant's alternative remedy is neither clear nor warranted

As an alternative to suppression of his July 18, 2012 statement, appellant asks this court to direct "an evidentiary hearing to determine whether the evidence presented, and the assistance provided, by the Mexican Consulate, had it been properly notified of appellant's case, would have (1) persuaded the trial court to exclude appellant's police interrogation or (2) likely have resulted in a verdict more favorable to appellant (or both)." Appellant has not established entitlement to any remedy at all, but his alternative remedy is utterly without merit.

Appellant has provided no legal authority in support of his awkwardly-stated request, and he has failed to explain what standards would govern his proposed "evidentiary hearing" on the impact of a consular advisement. He suggests that the hearing should address whether the trial court would have been persuaded to exclude his statement to the Los Angeles police, but we have shown that federal and state courts have both rejected suppression as a remedy. Appellant also suggests that the hearing should explore whether a more favorable verdict would have been likely, but he does not discuss the evidence that would be submitted or the legal standards that would determine this question.

Appellant asserts that his proposed "evidentiary hearing" is necessary because he was prejudiced during the trial court proceedings, but no prejudice has been shown. Citing *Sanchez-Llamas, supra*, 548 U.S. at p. 343, and *Enraca, supra,* 53 Cal.4th at 757, appellant contends he should be given the opportunity to demonstrate that his July 18, 2012 statement to the police was

involuntary. Appellant had that opportunity and made full use of it during trial. He presented evidence, through his own testimony and the expert testimony of Dr. Gomez, and both the trial court and the jury rejected the claim that his statement was involuntary and unreliable.

Appellant claims prejudice because the absence of a consular advisement prevented him from presenting corroborating evidence at trial. He states: "This omission was highly prejudicial to appellant's defense because, as a practical matter, the Mexican Consulate was the only realistic source of credible information to corroborate appellant's account of his experience at the hands of the Mexican police." This argument rests entirely on speculation, as appellant made no offer of proof at the trial level or in this court as to what specific evidence the Mexican Consulate would provide to support his case. And in all events, the absence of a consular advisement had nothing to do with appellant's failure to develop or present evidence in the trial court. Appellant has failed to show why his trial counsel could not have investigated appellant's claims or directly asked the Mexican Consulate to provide assistance in doing so.

In short, appellant has failed to provide adequate explanation and legal support for his proposed alternative remedy. An appellate court need not consider a conclusory argument for which no pertinent legal authority is furnished. (*People v. Hovarter* (2008) 44 Cal.4th 983, 1029; *People v. Stanley* (1995) 10 Cal.4th 764, 793; *City of Monterey v. Carrnshimba* (2013) 215 Cal.App.4th 1068, 1094, fn. 23.)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

JOHNSON (MICHAEL), J.*

We concur:

EDMON, P. J.

LAVIN, 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.