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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE OF THE STATE OF  
CALIFORNIA,

Plaintiff and Respondent,

v.

EDUARDO MORENO GARCIA,

Defendant and Appellant.

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B283487

(Los Angeles County  
Super. Ct. No. BA439521)

APPEAL from a judgment of the Superior Court of Los Angeles County. Larry P. Fidler, Judge. Affirmed.

Law Offices of Timothy V. Milner and Timothy V. Milner  
for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief  
Assistant Attorney General, Lance E. Winters, Assistant  
Attorney General, and Zee Rodriguez, Deputy Attorney General,  
for Plaintiff and Respondent.

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Defendant Eduardo Garcia Moreno appeals from his conviction, after jury trial, of first degree murder. The sole issue he raises on appeal is whether the trial court erred in denying his motion to suppress his confession on *Miranda* grounds and because it was coerced.<sup>1</sup> We conclude the court properly denied defendant's motion to suppress and affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### **1. *The Offense***

On the night of August 25, 2015, defendant shot and killed Armando Ortega. Ortega had been sitting in his parked car waiting for his girlfriend. Ivan Moreno, Kalil Yoakum and defendant were seated in a parked van nearby. Defendant exited the van with a gun in his hand. Ortega then reversed his vehicle and attempted to leave. As Ortega drove away, defendant aimed and fired the gun at Ortega. The bullet struck Ortega in the back of the head causing him to crash his vehicle. He later died from the gunshot wound.

### **2. *The Police Interview***

On September 22, 2015, defendant was arrested and questioned as part of a police investigation into Ortega's death. Los Angeles Police Department Detectives Calzadillas and Ahn conducted a videotaped interview with defendant. At the start of the interview, defendant gave his name, address, phone number, height, weight, and date of birth and stated he was previously arrested as a juvenile. The detectives then advised defendant of his *Miranda* rights. The *Miranda* warning began as follows:

“[Detective Calzadillas]: All right. Just – just because we’re here and arrestin- --uh, because you were brought in, we’ve got to read you your rights okay?”

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<sup>1</sup> See *Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*).

[Defendant]: Mm-hmm.

[Detective Calzadillas]: You have the right to remain silent.  
Do you understand?

[Defendant]: Yeah I guess. Why –

[Detective Calzadillas]: Oh we can talk about that after I  
read them to you. Okay?

[Defendant]: Okay.

[Detective Calzadillas]: Um, anything you say may be used  
against you in court. Do you understand?

[Defendant]: Yes.

[Detective Calzadillas]: You have the right to the presence  
of an attorney before and during any questioning. Do you  
understand?

[Defendant]: Okay.

[Detective Calzadillas]: If you cannot afford an attorney,  
one will be appointed for you free of charge before any  
questioning if you want. Do you understand?

[Defendant]: Yeah.

[Detective Calzadillas]: We've always got to read you your  
rights just because you were brought in. And before we start  
talking to you, before we start getting into anything, we've just  
got to get that out of the way. All right? Like I said I'm Detective  
Calzadillas. This is my partner, Detective Ahn. All right? Uh, let  
me just finish this up real quick."

Detectives asked defendant if he knew why he was there.  
Defendant said he did not, but moments later, he admitted that  
he "kind of did," and immediately volunteered some sort of  
intoxication defense, as follows:

"[Detective Calzadillas]: Let's not beat around the bush.

[Defendant]: Uh-huh.

[Detective Calzadillas]: I think you have a pretty good idea of why you're here. Um, we –

[Defendant]: Well I kind of did 'cause I was – I was under the influence of NOZ [Nitrous Oxide] and, um, I was kind of, like, on alcohol and stuff like that so I was on [unintelligible] I kind of don't remember.

[Detective Calzadillas]: Okay. When were you under the influence of NOZ and alcohol?

[Defendant]: Well you could say the most, like, two months straight.

[Detective Calzadillas]: Two months straight.

[Defendant]: Yeah.

[Detective Calzadillas]: And it happened during these two months or, um –

[Defendant]: Nah.”

Before Detective Calzadillas could ask what specific day the possible intoxication occurred, defendant immediately began discussing the day he was with Moreno and Yoakum. He ultimately volunteered that he was referring to the day Ortega was killed and recalled going to court the morning after the incident for a custody hearing. Later, defendant restated that on the day Ortega died, he was with Moreno and Yoakum and they were on “NOZ.” Defendant also remembered hearing about a shooting which occurred that night.

A few minutes later, defendant pinned Ortega's death on Yoakum. Defendant eventually confessed to shooting and killing Ortega, but claimed the shooting was accidental:

“[Defendant]: And that's – I got scared and that's when I got off. But I didn't act [unintelligible], like, then he backed up and then he went like that. But I – I – I didn't meant to shoot,

like, you know, shoot at him or nothing like that. He just scared me ‘cause I [unintelligible].

[Detective Calzadillas]: How many times did you shoot?

[Defendant]: Maybe just once. But I shot at the air. I ain’t trying to shoot at, like –”

3. *The Information*

Defendant was charged by information with one count of murder. (Pen. Code, § 187, subd. (a).)<sup>2</sup> The following special allegations were also charged: defendant personally used a firearm; personally and intentionally discharged a firearm; and personally and intentionally discharged a firearm, which caused great bodily injury and death to victim (§ 12022.53, subds. (b);(c);(d)). Defendant pled not guilty and denied the allegations.

4. *The Suppression Motion*

Defendant moved to exclude all of his statements to police on grounds that they were involuntary and were obtained without a *Miranda* waiver. During the suppression hearing, the prosecution introduced the transcript and video recording of defendant’s interview. Detective Calzadillas testified at the hearing that defendant did not show symptoms of intoxication due to either alcohol or narcotics and had no difficulty carrying a conversation. The detective was asked if there were any threats to use violence against defendant. Detective Calzadillas testified police made no threats to use violence. He also testified that he wore his firearm during the interview, but it never left his hip and he did not make reference to it. Defendant called an expert witness who reviewed the video of defendant’s confession and concluded that defendant seemed to be responsive and provide

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<sup>2</sup> All further statutory references are to the Penal Code.

relevant answers, but at other times did not directly respond to questions. The expert agreed detectives never took their firearms out of their holsters nor threatened defendant with them.

Defendant made four arguments for suppression of his statement. First, he claimed detectives did not properly advise him of his *Miranda* rights because they failed to ask if he understood each warning and if he wanted to speak with detectives. In response, the trial court determined that detectives were not required to ask suspects, “Do you want to talk to me?” Second, defendant argued that he did not waive his *Miranda* rights because he had asked a clarifying question. Defendant characterizes the answer, “Yeah I guess. Why,” when asked if he understood the right to remain silent, to be a clarifying question. The trial court determined defendant’s “Why?” did not invalidate his implied waiver of rights. The court also found that detectives could have clarified defendant’s response, but the law did not require them to do so. Third, defendant claimed he was under the influence when his statements were given. The trial court watched the recorded interview and found defendant did not appear to be under the influence. Instead, his mention of “NOZ” was interpreted as an attempt to try to mitigate responsibility by saying he was under the influence for two months and could not remember what took place. Finally, defendant claimed detectives used coercive police tactics. The trial court found that the “[Detective Calzadillas was] very nice to the [defendant] . . . he let [defendant] know where [he] stood. That’s all he did.” The trial court denied the motion to suppress defendant’s confession and the recorded interview was admitted at trial.

## 5. *The Trial*

The case proceeded to trial. The prosecution presented testimony from Ortega's girlfriend who recounted seeing a Hispanic man with features similar to defendant exit a van with a gun in hand and yell towards Ortega. Antonio T., a witness who saw the Ortega shooting, positively identified defendant as the man who exited the van, aimed and fired at Ortega. An expert witness on firearms examined the weapon used to kill Ortega. The expert determined an accidental discharge was unlikely because the safety functions were working properly. Also, the amount of force needed to pull the trigger was equivalent to "six and three-quarters" pounds which is higher than the normal five pound pressure needed to shoot a gun. The prosecution also introduced defendant's recorded confession. Defendant's sole defense was his testimony conceding that he shot Ortega, but claiming the shooting was unplanned and an accident. The jury convicted defendant as charged, found the murder to be in first degree, and all enhancements to be true.

## 6. *Sentencing*

Defendant was sentenced to 50 years to life as follows: 25 years to life for first degree murder, plus 25 years to life for the firearm enhancement. (§ 12022.53, subd. (d).) Sentences on the remaining enhancements were stayed under section 654. Defendant filed a timely notice of appeal.<sup>3</sup>

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<sup>3</sup> Defendant has not mentioned nor cited to applicable portions of the record in his opening and reply brief, violating rule California Rules of Court, rule 8.204(a)(1)(c). We nevertheless address the merits.

## DISCUSSION

On appeal, defendant argues the trial court erred by denying his motion to suppress. Specifically, with respect to *Miranda*, he contends: (1) he was improperly informed of his rights because detectives omitted two questions from the standard script; (2) he did not waive his rights because he asked a clarifying question; and (3) he was under the influence of alcohol and narcotics, and therefore, could not knowingly waive his rights. In addition, defendant claims his confession was involuntary because detectives used coercive police tactics when: (4) they “minimized” the legal significance of *Miranda*; and (5) they interviewed defendant in a small room while handcuffed and with their firearms in defendant’s view.

### 1. *Standard of Review*

Denial of a suppression motion on *Miranda* and coercion grounds requires a reviewing court to defer to the trial court’s resolution of disputed facts, if the resolution is supported by substantial evidence. (*People v. Jackson* (2016) 1 Cal.5th 269, 339.) “We independently determine from the undisputed facts and the facts properly found by the trial court whether the challenged statement was illegally obtained.” (*Ibid.*) “When, as here, the interview was tape-recorded, the facts surrounding the giving of the statement are undisputed, and the appellate court may independently review the trial court’s determination of voluntariness.” (*People v. Maury* (2003) 30 Cal.4th 342, 404.)

We treat defendant’s claim that his *Miranda* rights were violated and his claim that his confession was coerced, separately.



A. *Miranda Claims*

1. *Miranda v. Arizona*

Persons in custody or otherwise deprived by law enforcement of their freedom of movement must be fully informed of the right to remain silent and also be afforded a continuous opportunity to exercise that right. (*Miranda*, supra, 384 U.S. at p. 444.) A person may waive that right if the waiver is made voluntarily, knowingly and intelligently. (*Ibid.*)

Prior to any questioning, law enforcement officers must advise suspects of their rights to remain silent, that any statement made may be used as evidence against them, the right to an attorney, and that an attorney may either be retained or appointed. (*Miranda*, supra, 384 U.S. at p. 444.) A precise formulation of *Miranda* is not required. (*California v. Prysock* (1981) 453 U.S. 355, 359.) Rather, law enforcement must reasonably convey to suspects each of their rights as established by *Miranda*. (*People v. Wash* (1993) 6 Cal.4th 215, 237 (*Wash*).) An officer may not misstate *Miranda* or make an unclear and confusing admonition. (*Doody v. Ryan* (9th Cir. 2011) 649 F.3d 986, 1003.)

2. *Defendant Was Properly Advised of His Miranda Rights*

Defendant claims the detectives misinformed him of his *Miranda* rights when they omitted the following two statements, “Do you understand each of these rights that I have explained to you? Having in mind and understanding your rights as I have told you, are you willing to talk to me?” We disagree. Police are not required to recite the foregoing statements in rote language. *Miranda* is a prophylactic measure that does not require a “talismanic” recitation by law enforcement. (*Wash*, supra,

6 Cal.4th at p. 236.) *Miranda* is a safeguard which is designed to ensure defendants understand their rights. In our case, there is no evidence which suggests defendant misunderstood his rights. The record shows when defendant was asked if he understood all four warnings read to him, he replied “Yeah I guess. Why,” “Okay,” “Yes” or “Yeah.” Detectives’ accurate *Miranda* admonition and the defendant’s affirmative responses satisfy the *Miranda* requirements. We next turn to whether he waived his *Miranda* rights.

3. *Defendant’s Implied Waiver of Miranda was Proper.*

Defendant contends that he did not properly waive his *Miranda* rights. It is well-settled that a waiver may be express or implied from the suspect’s words or actions. (*Berghuis v. Thompson* (2010) 560 U.S. 370, 385 (*Berghuis*).) A waiver is implied if a suspect fully understands the rights afforded to him or her and acts in a manner that is inconsistent with the exercise of those rights. (*Ibid*; see also *People v. Cunningham* (2015) 61 Cal.4th 609, 642 [holding a custodial suspect who fully heard and understood an explanation of his *Miranda* rights and made an uncoerced decision to talk, had thereby knowingly, voluntarily, and intelligently waived them].)

In this case, defendant’s waiver was implied. After defendant was admonished, he participated in a free and uncoerced conversation with the detectives. Without being asked, defendant volunteered that he had been under the influence of narcotics. The detectives then asked defendant what day he was under the influence. Defendant stated, “Well you could say the most, like, two months straight,” and a few moments after, defendant voluntarily discussed the night he was with his cousin. The statements given demonstrate defendant’s

intent to waive his right to remain silent and speak with the detectives.

Defendant claims his waiver was unknowingly given because he asked a clarifying question (“Why”) after he said he understood his right to silence. When Detective Calzadillas stated, “You have the right to remain silent. Do you understand,” defendant responded, “Yeah I guess. Why –” The trial court determined the detective could have responded to defendant’s question, but the law did not require him to do so. Based on our independent review of the videotape, we find two likely interpretations of defendant’s question (“Why?”). Defendant asked the detective either why he was at the police station or why was he being given *Miranda* warnings. Regarding why defendant was arrested, we discuss below that defendant knew he was brought in for questioning as part of an investigation into Ortega’s death. Defendant also does not cite to, nor has independent research disclosed, any authority requiring interrogating officers to interrupt the *Miranda* warning to answer the suspect’s questions unrelated to the specifics of the warnings. Nevertheless, it appears that, Detective Calzadillas subsequently answered defendant’s question and informed defendant that because he was brought in, he must be advised of his *Miranda* rights. The detective’s explanation was given prior to defendant’s implied waiver. We conclude defendant’s brief questions did not undermine his *Miranda* waiver.

4. *Defendant’s Waiver Was Not Affected by His Claimed Consumption of Alcohol and Narcotics*

Defendant contends his waiver was involuntary because he was under the influence of alcohol and narcotics. Voluntary consumption of narcotics or alcohol, alone, does not establish an

impaired capacity. (*People v. Bauer* (1969) 1 Cal.3d 368, 374 [narcotics], *People v. Frye* (1998) 18 Cal.4th 894, 988 [alcohol] disapproved on other grounds in *People v. Doolin* (2009) 45 Cal.4th 390, 421.) Evidence that might suggest a lack of understanding must be accompanied by evidence of actual inability to comprehend or lack of ability to make a free and rational choice to waive his rights. (*People v. Cunningham* (2015) 61 Cal.4th 609, 645.) Defendants' coherent and responsive answers may show lack of an impaired mental state. (*People v. Hensley* (2014) 59 Cal.4th 788, 814 [holding a defendant understood questions asked, and freely and deliberately spoke with police officers because his responses were coherent when he spelled his name, gave his date of birth and street address].)

Here, the trial court watched the recorded interview and found defendant was not under the influence. The trial court reasonably found that defendant's statement about "NOZ" was a ploy to mitigate responsibility by saying he was under the influence for two months and could not remember what took place. We agree. Under any standard of review, the trial court's finding of an implied waiver unencumbered by intoxication is correct. The court's factual findings are supported by substantial evidence, and our independent review of the recorded interview is in agreement. At the start of his interview, defendant stated his name, address, father's telephone number, age, height and weight. He remembered how many shots he fired at Ortega and that he went to court on a custody matter the morning after Ortega was killed. There was no evidence that defendant's mental state was impaired or that his implied waiver of *Miranda* was effected by his possible consumption of alcohol or narcotics.

B. *Involuntary Confession Claims*

1. *Applicable Law*

A suspect's confession is involuntary if the suspect's will was overborne and the confession was not the result of rational intellect and free will. (*People v. Linton* (2013) 56 Cal.4th 1146, 1176 (*Linton*).) Specifically, a confession is involuntary if it was produced by police coercion and the coercion was the motivating cause of the confession. (*Ibid.*) To determine if a defendant's confession is involuntary, courts will look at the totality of the circumstance surrounding the confession. (*Withrow v. Williams* (1993) 507 U.S. 680, 693.) The inquiry may include the length and location of the police interrogation, the defendant's physical condition and mental health, conduct of the interrogator, and the failure by police to advise the defendant of his *Miranda* rights. (*Ibid.*)

2. *Defendant Knew the Legal Significance of Miranda*

Defendant first argues his confession was involuntary because detectives minimized the legal significance of *Miranda*. Evidence of police efforts to trivialize a suspect's *Miranda* rights by "playing down" or "minimizing their legal significance," can suggest prohibited police trickery and render subsequent confessions involuntary. (*People v. Musselwhite* (1998) 17 Cal.4th 1216, 1237.) Advising suspects that *Miranda* warnings are read to "clear a technicality" is evidence of prohibited police trickery unless the suspects are aware they are being questioned as part of a police investigation. (*People v. Johnson* (2010) 183 Cal.App.4th 253, 294-295 [conviction affirmed because the suspect knew why she was arrested since, prior to her arrest, the officers interviewed her friends about the incident and the

officers asked her about driving the “getaway” car before she was *Mirandized*].)

In this case, the trial court found detectives did not attempt to trick defendant; detectives expressed they wanted to let defendant know “where he stood.” We agree the detectives did not minimize the legal significance of *Miranda*. We interpret Detective Calzadillas’s response, “We’ve always got to read you your rights just because you were brought in. And before we start talking to you, before we start getting into anything, we’ve just got to get that out of the way,” as an informative statement explaining the reason he advised defendant of his *Miranda* rights. The critical issue is whether defendant knew or should have known he was being questioned as part of a police investigation. The record indicates that he did. When asked whether defendant knew why he was there, he first stated that no one informed him of anything. Defendant then retreated and said that he “kind of” knew why he was there and directed the discussion to the day of the Ortega shooting. Defendant also said he remembered hearing about a shooting that occurred that night. Defendant’s voluntary statements about the day Ortega was killed established he knew the reason detectives brought him in for questioning.

3. *Detectives Did Not Intimidate Defendant During His Interview*

Defendant claims there is evidence of police coercion because he was interviewed in a small room and handcuffed while the detectives’ weapons were in plain sight. We have viewed the thirty-minute interrogation video. The textual basis for defendant’s coercion claim is simply not true. The video opens with a scene of defendant in the room handcuffed. A few seconds

later, the detectives enter the room and immediately Detective Calzadillas removes the handcuffs. During the interview, the detectives spoke in a soft and calm voice. Defendant appeared relaxed and leaned back in his chair to become comfortable. On two occasions, and without hesitation, he took Detective Calzadillas's notepad and began writing. Defendant also interrupted the detectives throughout the interview.<sup>4</sup>

Defendant takes three facts in isolation to argue coercion: (1) he was handcuffed; (2) he was placed in a small room; and (3) he saw the detectives' firearms.

First, defendant was *uncuffed* during the entire interview. Second, there is no evidence that the size of the interview room had any effect on defendant's willingness to talk to the detectives. It is true the configuration of an interview may suggest coercion. (*Reck v. Pate* (1961) 367 U.S. 443, 444.) But a confession is not involuntary solely because the interrogation takes place in a small space. (*United States v. Orso* (9th Cir. 2001) 266 F.3d 1030, 1038 (*Orso*).)

Here, the interrogation room was large enough to hold three adult men, a table and three chairs. Defendant also had ample space to lean back in his chair throughout the interview.

Third, detectives did not point their weapons at defendant nor reference them. Although the actual use of a weapon may be strongly suggestive of coercion, an officer armed during an interview does not mandate a finding of police coercion. (*McCall v. Dutton* (6th Cir. 1988) 863 F.2d 454, 459 (*McCall*).)

The detectives' firearms were only visible in the first seconds when defendant was being uncuffed. Defendant did not

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<sup>4</sup> An additional example of defendant's ease in the interview room was that at various times he called an officer "Bro."

confess to shooting Ortega immediately after seeing the detectives' firearms, thus, the weapons had no effect on him. Once the interview began and defendant was seated, the detectives' firearms were out of defendant's view. Defendant appeared relaxed and comfortable. There is no evidence that the detectives used their firearms in any way.

**DISPOSITION**

The judgment is affirmed.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J.

DUNNING, J.\*

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