No. S124131 - CAPITAL CASE

In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,

v.

JOSEPH ANTHONY BARRETT,
Defendant and Appellant.

Imperial County Superior Court, Case No. CF-5733
The Honorable Joseph Zimmerman, Judge

SUPPLEMENTAL RESPONDENT'S BRIEF

ROB BONTA (SBN 202668)
Attorney General of California
LANCE E. WINTERS (SBN 162357)
Chief Assistant Attorney General
JAMES WILLIAM BILDERBACK II (SBN 161306)
Senior Assistant Attorney General
KRISTINE A. GUTIERREZ (SBN 199209)
Deputy Attorney General
ANNE SPITZBERG (SBN 234534)
Deputy Attorney General
600 West Broadway, Suite 1800
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 738-9561
Fax: (619) 645-2012
Anne.Spitzberg@doj.ca.gov
Attorneys for Plaintiff and Respondent

February 6, 2025

TABLE OF CONTENTS

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

Page

STATUTES

CONSTITUTIONAL PROVISIONS

TABLE OF AUTHORITIES
(continued)

Page

COURT RULES

OTHER AUTHORITIES

INTRODUCTION

In 1996, appellant Joseph Anthony Barrett violently killed his cellmate, Thomas Richmond, in Calipatria State Prison, by stabbing him with a self-made knife in the back of his head and in his vital organs because he believed Richmond was a "snitch." Barrett took Richmond by surprise, attacking him in his bed in the middle of the night and then stabbed him in the back as Richmond tried to retreat. When he murdered Richmond, Barrett was serving a life prison term for having been previously convicted of murder. The penalty phase evidence included testimony about Barrett's numerous prior armed robberies and assaults before he went to prison and assaults, weapons possession, and other violent behavior while in prison.

In his Supplemental Opening Brief, Barrett makes additional arguments for three of his claims – that the denial of his pre-trial motion to excuse all prospective jurors employed by CDCR forced upon him an impliedly biased juror in violation of his right to an impartial jury, the trial court erred by admitting his 1986 confession to murder because of an allegedly defective *Miranda*[1] waiver, and the prior murder special circumstance finding must be reversed because Barrett was a juvenile at the time of that conviction. The first two claims are forfeited, and all fail as meritless.

[1] *Miranda v. Arizona* (1966) 384 U.S. 436.

ARGUMENT

I. THE TRIAL COURT PROPERLY DENIED BARRETT'S MOTION TO EXCLUDE ALL CORRECTIONAL DEPARTMENTAL EMPLOYEES AS PROSPECTIVE JURORS

Barrett claims in his Opening Brief and again in his Supplemental Opening Brief that the trial court's allegedly erroneous denial of his blanket challenge for cause to all CDCR employee prospective jurors, by virtue of their employment, violated his fundamental constitutional rights. (AOB 91-160 [Arg. I]; SAOB 15-39.) Specifically, he argues that as a result of this alleged error, Juror No. 12, who was impliedly biased, sat on his jury in violation of the Code of Civil Procedure section 229, his federal and state constitutional rights to an impartial jury, and his due process right to intelligently exercise his peremptory challenges. (SAOB 15.) Barrett further asserts that he properly preserved this claim for appeal despite not exercising a peremptory challenge on Juror No. 12, not exhausting all his peremptory challenges, and failing to express dissatisfaction with the jury as seated.

Barrett's claim should be denied. He has forfeited his claim on appeal because he failed to meet the preservation requirements to first have exhausted all peremptory challenges and sufficiently expressed dissatisfaction with the seated jury. However, even if preserved for appeal, Barrett bears the burden of demonstrating that the trial court's rulings affected his right to a fair and impartial jury. (*People v. Black* (2014) 58 Cal.4th 912, 920.) Barrett fails to meet this burden. The trial court's denial of his motion to exclude all CDCR employees prior to general voir

dire was not error and did not force a legally incompetent juror upon him.

A. Barrett forfeited this claim because he failed to use all his peremptory challenges, failed to express dissatisfaction with the jury as constituted, and has failed to provide sufficient justification for both deficiencies

Barrett asks this Court to reach the merits of his claim despite his failure to exhaust all his peremptory challenges and despite his failure to express dissatisfaction with the jury as constituted. (SAOB 16, 31-36.) This Court should decline to do so.

Under state law, "[t]o preserve a contention that the court erred in denying a challenge for cause to a prospective juror, the defendant must (1) exercise a peremptory challenge to remove that prospective juror, (2) exhaust all peremptory challenges or somehow justify the failure to do so, and (3) express dissatisfaction with the jury that is ultimately selected." (*People v. Rices* (2017) 4 Cal.5th 49, 75; *People v. Souza* (2012) 54 Cal.4th 90, 130 [Defendant forfeited his claim of trial court error because after the court denied his challenge for cause to Juror No. 5, defendant failed to challenge that juror peremptorily, failed to exhaust his peremptory challenges, and failed to express dissatisfaction with the jury]; *People v. Kirkpatrick* (1994) 7 Cal.4th 988, 1005, disapproved of on other grounds by *People v. Doolin* (2009) 45 Cal.4th 390; cf. *People v. Black*, *supra*, 58 Cal.4th at p. 918 ["Defendant has preserved his claim for appeal because he exhausted his peremptory challenges, declared his

dissatisfaction with the jury as finally constituted, and requested additional challenges"].)

Barrett fails to meet any of these requirements to preserve his claim on appeal. As to the first requirement, Barrett exercised multiple peremptory challenges to remove seven CDCR employees from the prospective jury pool, but did not exercise a peremptory on Juror No. 12, a CDCR employee that sat on the jury. (SAOB 31-32; 46 RT 5577-5634.) As to the second requirement, Barrett admits he used only 14 of his 20 challenges and did not exhaust all his peremptories. (SAOB 31, AOB 119; see also 46 RT 5628.) As to the third, and final, requirement, Barrett did not, at the time the jury was selected, express dissatisfaction with the jury as seated, which he conceded in the Opening Brief, but now claims that he sufficiently expressed dissatisfaction.[2] (AOB 126-127; SAOB 35-36; 46 RT 4628-4629 ["Defense will pass for cause or for peremptories, Your Honor"].)

Barrett argues that because he needed to use his peremptory challenges to excuse CDCR personnel instead of other unfavorable jurors, he was justified in not exercising his remaining six peremptories so that he could intentionally leave a biased juror (Juror No. 12) on the jury and avoid a potentially worse juror yet to come. (SAOB 15-16, 31-36.) This Court has previously rejected this argument in *People v. Mills* (2010) 48

---

[2] Immediately prior to accepting the jury as constituted, Barrett did not indicate dissatisfaction with the panel, however he challenged the People's strike of a black prospective juror under *Batson v. Kentucky* (1986) 476 U.S 79 and *People v. Wheeler* (1978) 22 Cal.3d 258. (46 RT 5624-5628.)

Cal.4th 158, *People v. Manibusan* (2013) 58 Cal.4th 40, *People v. Hillhouse* (2002) 27 Cal.4th 469, and *People v. Winbush* (2017) 2 Cal.5th 402.

In *Mills*, *supra*, the defendant moved to have the trial court excuse three prospective jurors for cause, which the court denied, claiming their views on capital punishment would substantially impair their competence as jurors. (*People v. Mills*, *supra*, 48 Cal.4th at p. 185.) None of the three jurors sat on defendant's jury. (*Ibid.*) Later, counsel exhausted his allotted peremptory challenges as to regular jurors but did not ask for additional challenges or otherwise express dissatisfaction with the jury. (*Ibid.*) The third challenged juror remained in the pool of prospective alternate jurors. (*Ibid.*) One of the three challenged jurors was seated in the box as a potential alternate juror, but defendant exercised a peremptory challenge as to that juror and ultimately used five out of six challenges allotted. (*Ibid.*) On appeal, defendant claimed that the trial court erred in denying his three challenges for cause. (*Id.* at pp. 185-186.) This Court rejected defendant's claim and found that the claim was forfeited. (*Id.* at p. 186.) This Court set forth the three requirements and then determined that the defendant did not preserve his claims as to the challenged jurors because he did not exhaust his six peremptory challenges. (*Ibid.*) On appeal, the defendant argued as justification for his failure to exhaust his peremptories, similar as Barrett does here, that he needed to hold a peremptory challenge in reserve to excuse an unfavorable juror that was due to be called up. (*Ibid.*) This Court rejected that purported

justification and stated, "acceptance of this excuse would swallow the rule entirely, for a defense attorney might in every case wish to hold challenges in reserve for strategic reasons." (*Ibid.*)

Likewise, in *Manibusan*, *supra*, the defendant claimed that the trial court erred in denying his request to excuse for cause five prospective jurors who were biased in favor of voting for a death sentence. (*People v. Manibusan*, *supra*, 58 Cal.4th at p. 61.) This Court determined that defendant forfeited his claim because he used only 19 of his 20 peremptory challenges. (*Ibid.*) The defendant argued that this Court should abandon the forfeiture rule because it presents criminal defendants with "'an intolerable dilemma'": the 'unconscionable choice'" between using the final challenge and facing a more unfavorable jury due to the answers given by the next jurors to be called into the box or preventing this by accepting the jury as constituted. (*Ibid.*) This Court rejected the defendant's argument, finding it speculative based upon the record, and referred to its previous decision in *People v. Mills*, *supra*, quoting "acceptance of this excuse would swallow the [exhaustion] rule entirely. . . ." (*Ibid.*) Barrett, like the defendant in *Manibusan*, argues that he was faced with a professional and strategic bind by needing to use half of his peremptory challenges to excuse jurors that allegedly "should have been excused for cause" and that he was thus faced with a difficult choice of "whether to preserve the strength of whatever tactical decisions he had been able to make during jury selection, knowing that one biased juror would remain on the jury, or to strike Juror No. 12, and risk running out of peremptory

challenges while an even more biased CDCR employee juror remained in the jury box, alongside other undesirable prospective jurors who counsel would have also excused if he had peremptory challenges remaining." (SAOB 32-33.) In addition to being purely speculative, this argument is analogous to that made by the defendant in *Manibusan*, and which was expressly rejected by this Court. (*People v. Manibusan*, *supra*, 58 Cal.4th at p. 61.) This Court should also reject it here, especially since Barrett had not just one peremptory challenge remaining as the defendants in *Mills* and *Manibusan* did, but *six*.

In *Hillhouse*, the defendant exercised only 11 of his peremptory challenges, leaving him with nine remaining when he accepted the jury, but on appeal challenged the trial court's denial of his challenges for cause. (*People v. Hillhouse*, *supra*, 27 Cal.4th, at pp. 486-487.) Like the present case, one of the five prospective jurors that the defendant challenged for cause ultimately sat as a juror on the trial. (*Id.* at p. 487.) In finding that the defendant had forfeited his appellate claim, the Court of Appeal held that the "[d]efendant could have used a peremptory challenge to remove this juror but chose not to do so" and, accordingly, he may not now complain that he served as a juror. (*Ibid.*) The United States Supreme Court upheld a similar Oklahoma rule in *Ross v. Oklahoma* (1988) 487 U.S. 81 stating "there is nothing arbitrary or irrational" about such a law that "subordinates the absolute freedom to use a peremptory challenge as one wishes to the goal of empaneling [sic] an impartial jury." (*Ibid*; *Ross v. Oklahoma*, *supra*, at p. 90; *People*

v. Winbush, *supra*, 2 Cal.5th at p. 426.) Similarly, Barrett chose not to remove Juror No. 12, a juror that was included in his blanket challenge for cause to all CDCR employee prospective jurors, and "may not now complain" that she served as a juror. (See *Hillhouse*, *supra*, at p. 487.)

Barrett argues that a comparison of his case with *People v. Winbush*, *supra*, is instructive, but *Winbush* does not help him. In *Winbush*, the defendant challenged two prospective jurors for cause on the grounds that they could not be fair. (*People v. Winbush*, *supra*, 2 Cal.5th at p. 425.) The trial court denied those challenges for cause. (*Ibid.*) Both challenged jurors were seated on the defendant's jury, but defendant failed to exercise any peremptory challenges as to those jurors and declared he was satisfied with the jury. (*Ibid.*) On appeal, the defendant complained that the trial court erred in denying his challenges for cause. (*Ibid.*) This Court reiterated its holding in *Mills*, *supra*, re-stating the three requirements. (*Ibid.*, quoting from *People v. Mills*, *supra*, 48 Cal.4th at p. 186.) The defendant, like Barrett here, did not peremptorily challenge Juror No. 12 and did not exhaust his challenges, and thus did not preserve his claim of error. (*Id.* at 425-426.)

Barrett also failed to satisfactorily express dissatisfaction with the seated jury as state law requires. He claims that he "raised the issue of CDCR employee juror bias multiple times" and because no specific wording is required, he sufficiently expressed his dissatisfaction with the jury as seated. (SAOB 35; see *People v. Rices*, *supra*, 4 Cal.5th at p. 75.) Not so. This Court

in *Rices*, established that, while no specific wording is required, a defendant must clearly express dissatisfaction with the jury at the time it is seated and not, as did Barrett, prior to the start of general voir dire. In that case, before the jury was finally selected, defendant moved for the court to reconsider its previous denial of his earlier challenges for cause or, in the alternative, for additional peremptory challenges, both of which the court denied. (*Ibid*.) Then, after the jury was selected and before selecting alternates, defendant again renewed the motion for more peremptory challenges, which the court again denied. (*Ibid*.) This Court determined that, although defense counsel did not say the precise words, "I am dissatisfied with the jury," the action of requesting additional peremptory challenges after the jury had been selected effectively expressed that dissatisfaction. (*Ibid*.)

In direct contrast to the defendant in *Rices*, Barrett's counsel did not ask the court to reconsider his earlier challenges for cause to the CDCR employees nor did he ask for more peremptory challenges after the jury had been selected. At the time of Barrett's trial in 2003, it was known that, because of a defendant's obligation to advise the court of dissatisfaction with the jury, a request for additional peremptory challenges is an appropriate remedy to cure an alleged erroneous denial of a challenge for cause. (*People v. Bittaker* (1989) 48 Cal.3d 1046, 1088, overruled on other grounds by *People v. Black*, *supra,* 58 Cal.4th at p. 919 and *People v. Rices*, *supra*, 4 Cal.5th at p. 76.) Yet Barrett's counsel failed to do so. Prior to trial, on August 20, 2003, Barrett's counsel suggested a stipulation to excusing all

correctional officers, but the trial court stated that it would not entertain such a stipulation prior to conducting voir dire unless Barrett provided law establishing that correctional officers cannot sit as jurors on a criminal case. (14 RT 2158-2161.) No such authority was proffered by Barrett's counsel. (14 RT 2158-2161.) Nevertheless, on October 2, 2003, Barrett's counsel again asked the trial court to reconsider a stipulation to excuse CDCR personnel, or at least the correctional officers, given the likelihood that they would know the witnesses and have personal knowledge of the prison system. (26 RT 2961-2965.) The trial court did not entertain the idea of a stipulation to that effect. (26 RT 2961-2965.) Barrett's counsel then made his one and only request to excuse all CDCR personnel for cause on November 17, 2003, right before general voir dire commenced. (45 RT 5440-5441.) The trial court denied the motion. Neither before nor after the jury was finally selected did Barrett's counsel state he was dissatisfied with the jury, exhaust or ask for additional peremptory challenges, or ask the trial court to reconsider its denial of his challenges for cause to all CDCR personnel, as did the defendant in *Rices*. (46 RT 4625-4628; see *People v. Rices*, *supra*, 4 Cal.5th at p. 75.) As a result of his failure to establish the requirements for preservation of his claim, Barrett has forfeited it.

B. The trial court's denial of Barrett's motion did not result in a violation of his rights to an impartial jury and due process

Barrett contends that the "extreme situation" in this case rendered all CDCR employee prospective jurors, including Juror

No. 12 who sat on the jury, impliedly biased. (SAOB 16.) As a result, he argues his right to an impartial jury was violated because Juror No. 12, due to implied bias only, was an incompetent juror forced upon him.[3] (SAOB 15-31.) As thoroughly addressed in the Respondent's Brief and reasserted here, to prevail on a claim that the trial court erroneously denied a challenge for cause, Barrett "must demonstrate that the court's rulings affected his right to a fair and impartial jury." (RB 45-46; *People v. Ramirez* (2022) 13 Cal.5th 997, 1048.) Although Barrett used peremptory challenges to excuse seven prospective jurors that he claims should have been excused for cause because they worked for the CDCR, the court's denial of these challenges for cause could not possibly have affected the fairness of Barrett's trial because those individuals did not sit on his jury. (RB 46; *Id.* at p. 1047; *People v. Black*, *supra*, 58 Cal.4th at p. 921.) As this Court has previously held, the loss of peremptory challenges in this manner provides grounds for reversal only if the defendant exhausts all such challenges and an incompetent juror is forced upon him. (*People v. Yeoman* (2003) 31 Cal.4th 93, 114.) As discussed in Argument (A), *ante*, Barrett did not exhaust his peremptory challenges, and in fact, had *six* challenges remaining.

---

[3] To support his claim that this is an exceptional situation, Barrett recites statistics that were not made part of the record below and so should not be considered here. (See SAOB 21-23; Cal. Rules of Court, rule 8.204(a)(2)(C) [An appellant's opening brief must "[p]rovide a summary of the significant facts *limited to matters in the record*" (emphasis added)].)

He has also failed to show that an incompetent juror was forced upon him.

Barrett argues that Juror No. 12 was impliedly biased and thus, her presence on the jury compels reversal. (SAOB 31.) An incompetent juror is one that should have been excused for cause. (*People v. Black*, *supra*, 58 Cal. 4th at p. 918.) The Respondent's Brief describes, at length, the settled legal principles which govern for-cause juror challenges, none of which have changed and thus need not be repeated here. (RB 46-48.) Implied bias – as, when the existence of facts as ascertained, in judgment of law disqualifies the juror – is the only relevant for-cause challenge raised in the Supplemental Opening Brief. (See generally, SAOB 15-39; see Code of Civ. Proc., § 225, subd. (b)(1)(B).)

Under California law, "a juror may be excused for 'implied bias 'only for one of the reasons listed in Code of Civil Procedure section 229, 'and for no other.'" (*People v. Ledesma* (2006) 39 Cal.4th 641, 669-670; *People v. Ramirez*, *supra*, 13 Cal.5th at p. 1047.) Although Barrett complains that Juror No. 12 was impliedly biased by virtue of her employment with the CDCR, none of the statutory grounds for "implied bias" laid out in section 229 are present here.[4] (See Code Civ. Proc., § 229, subds (a)-(h) [Implied bias includes being a relative to a party, victim,

---

[4] If the facts do not establish one of the grounds for implied bias listed in section 229, the juror may be excused for "actual bias" if the court finds that the juror's state of mind would prevent him or her from being impartial. (*People v. Ledesma*, *supra*, 39 Cal.4th at p. 670; Code Civ. Proc. § 225, subd. (b)(1)(C).) Barrett only argues Juror No. 12 was impliedly biased, he does not contend she should have been excused as actually biased.

or witness; having a personal interest in the action; having served as a juror or witness on a trial between the same parties or same cause of action; having an unqualified opinion as to the merits of the action; having a state of mind evincing enmity or bias against a party; being a party to the action; or having a preclusive opinion against the death penalty in a death penalty case].)

Nevertheless, Barrett urges this Court now, as he did in the Opening Brief, to apply federal circuit case law to find implied bias. (AOB 102-107; SAOB 19-21.) Barrett cites to *U.S. v. Allsup* (9th Cir. 1977) 566 F.2d 68 and *Rodriguez v. County of Los Angeles* (9th Cir. 2018) 892 F.3d 776, in support of his argument. (SAOB 16, 27, 29-30.) Neither of these cases is binding on this Court. In addition, *Allsup* is distinguishable, and *Rodriguez* supports a finding that the CDCR employees were not impliedly biased. *Allsup* involved two prospective jurors who were bank employees at the bank the defendant had robbed. (*Allsup*, *supra*, at p. 71.) The Ninth Circuit determined that "[p]ersons who work in banks have good reason to fear bank robbery because violence, or the threat of violence, is a frequent concomitant of the offense." In contrast, the CDCR employees in Barrett's jury pool were not sitting on a case that involved violence against a CDCR employee, and thus are not similarly situated to the bank employees in *Allsup*. As a result, they are not subject to the Ninth Circuit's concern over the potential for substantial emotional involvement adversely affecting impartiality. (*Ibid.*) Thus, even if persuasive, *Allsup* should not influence the Court's

decision here. The Ninth Circuit in *Ramirez*, *supra*, limited its holding in *Allsup* and cautioned that "courts assessing implied bias 'should hesitate before formulating categories of relationships which bar jurors from sitting in certain types of trials' . . . [f]or example, 'we will not presume bias merely because a juror works in law enforcement or is a federal government employee.'" (*Ramirez*, *supra,* at p. 804.) The Ninth Circuit emphasized that, after *Allsup* was decided, the court "noted the limits of *Allsup's* holding, explaining that '[t]he implied bias that we found in *Allsup* was based on the juror's direct relationship with the victim and their own vulnerability to the same type of conduct for which the accused bank robbers were on trial.'" (*Ibid*. quoting *Fields v. Brown* (9th Cir. 2007) 503 F.3d 755, 773.) Thus, even the federal cases cited by Barrett do not support his argument and they should be disregarded by this Court.

Further, as laid out in the Respondent's Brief, Juror No. 12 worked in a completely separate prison than the one in which Barrett was housed and where the crime occurred. (RB 49.) She did not know any of the witnesses, nor did she know Barrett and she did not evince any bias against him. The record further bears this out as her responses to the questionnaire and during voir dire reveal she would be a fair and impartial juror. (See RB 49-51; 29 CT 8037-8070; 38 RT 4397-4406; 46 RT 5477.) Barrett's counsel commended Juror No. 12 for seeming "determined to be fair" and then passed on her for cause. (38 RT 4406.)

This Court's decision in *Ledesma*, *supra*, is instructive. In *Ledesma*, the trial court refused to excuse a prospective juror,

P.W., for cause, per stipulation, or allow the defendant an extra peremptory challenge to excuse that juror. (*Id.* at p. 668.) Prospective juror P.W. worked for the CDCR in the same jail as that in which the defendant was housed and was questioned by the prosecutor about whether he had seen defendant in the prison. (*Ibid.*) Defense counsel asked for a mistrial and for an additional peremptory based on "contamination prejudice," both of which were denied. (*Ibid.*) Defense counsel then challenged P.W. for cause based on his knowledge of the defendant's prison status and then engaged in further questioning of P.W. (*Ibid.*) During that questioning, P.W. indicated his job would not affect his ability to serve. (*Ibid.*) Defense counsel then argued that he was faced with a dilemma to either employ his last peremptory challenge on P.W, a juror that was leaning toward the death penalty, or retain him even though he was contaminated by his personal knowledge of the defendant. (*Ibid.*) Defense counsel offered to stipulate, to which the prosecutor agreed but which the trial court rejected. (*Ibid.*) Defense counsel ultimately used his final peremptory challenge to excuse another juror and P.W. served on the jury. (*Ibid.*) On appeal, the defendant argued that P.W.'s employment as a corrections officer in the prison system where defendant was housed constituted implied bias. (*Id.* at p. 669.) He claimed that P.W.'s position as a corrections officer and knowledge of the defendant rendered him unable to decide the case impartially, and thus, the court's failure to excuse him violated the defendant's right to an impartial jury. (*Id.* at p. 670.) The defendant relied on federal cases concluding that bias may be

implied from the "potential for substantial emotional involvement" inherent in certain relationships." (*Ibid*.) Assuming those federal cases, which are not binding, were "otherwise persuasive," this Court disagreed with the defendant and reasoned that P.W. did not work in the part of the jail in which defendant was housed and, "on the present record," there was no potential for the type of emotional involvement that the federal cases found to be grounds for disqualification. (*Ibid*.)

Like the defendant in *Ledesma*, Barrett relies on lower federal cases and claims that Juror No. 12's employment with the CDCR made her "unduly emotionally involved" in the issues and therefore impliedly biased. (SAOB 29; see also SAOB 19-21.) This Court should follow its own precedent and decline Barrett's invitation to deviate from settled state law. However, should this Court find those federal cases otherwise persuasive, there was, like in *Ledesma*, no potential on the present record for the type of emotional involvement that these cases found to be grounds for disqualification.

Recently, in *People v. Ramirez*, *supra*, 13 Cal.5th 997, this Court upheld the trial court's denial of the defendant's blanket challenge for cause against a large group of correctional officers in the jury pool. (*People v. Ramirez*, *supra*, at pp. 1046-1048.) Despite arguing, as Barrett does here, that the unique facts of the case rendered all correctional officers in the jury pool unfit to serve because the case was a "chief subject of concern" in the numerous correctional institutions in the county, this Court concluded that none of the statutory grounds for a finding of

implied bias were present. (*Id*. at pp. 1046-1047.) Like in the present case, the defendant's assertion about panelists' exposure to case information among correctional officers was explored on a case-by-case basis, and as a result, many of those prospective jurors did not sit on the jury. (*Id*. at p. 1047.) This Court reiterated that those that did not sit on the jury could not possibly have affected the fairness of defendant's trial. (*Ibid*.) Furthermore, this Court explained that qualified jurors "need not be totally ignorant of the facts and issues involved," and the mere existence of any preconceived notion as to the guilt or innocence of an accused, without more, is insufficient to rebut the presumption of a juror's impartiality. (*Id*. at p. 1049.) "It is sufficient if the juror[s] can lay aside [their] impression[s] or opinion[s] and render a verdict based on the evidence presented in court." (*Ibid*.)

Under these circumstances, Barrett has not shown his right to a fair and impartial jury was violated by the trial court's denial of his motion because Juror No. 12, the only juror on his jury that was subject to his original blanket for-cause challenge, was not biased. Barrett's claim should accordingly be denied.

C. Barrett's due process rights were not violated by the trial court's refusal to grant his motion to dismiss all prospective juror CDCR employees

Barrett also argues, as he did in the Opening Brief, that the trial court's denial of his motion to excuse all CDCR employees from the jury pool violated his due process right to intelligently exercise his peremptory challenges. (AOB 132-137; SAOB 36-39.) He asserts that he was prejudicially disadvantaged by needing to

use more peremptory challenges relative to the prosecution as a result.[5] (SAOB 36-38.) "[T]here is no freestanding constitutional right to peremptory challenges." (*Rivera v. Illinois* (2009) 556 U.S. 148, 157.) Peremptory challenges are a state statutory mechanism "to help secure the constitutional guarantee of trial by an impartial jury." (*Id.* at p. 159; *People v. Black*, *supra*, 58 Cal.4th at pp. 916-917 ["'[P]eremptory challenges are not of constitutional dimension,' but are merely 'a means to achieve the end of an impartial jury'"].) Thus, the loss of a peremptory challenge does not constitute a violation of the constitutional right to an impartial jury. (*People v. Avila* (2006) 38 Cal.4th 491, 540.) "If no biased or legally incompetent juror served on defendant's jury, the judgment against him does not suffer from a federal constitutional infirmity, even if he had to exercise one or more peremptory challenges to excuse prospective jurors whom the court should have excused for cause." (*Black*, *supra*, at p.

---

[5] Despite appellants claims of unfair treatment by the trial court, the court excused for cause 19 CDCR employees from the prospective juror pool prior to the start of general voir dire. (See 28 RT 3066-3069, 3973-3077; 33 RT 3853-3855; 34 RT 3920-3924, 3926-3941; 35 RT 4189-4190; 36 RT 4305-4316, 4351-4368; 40 RT 4669-4670, 4718-4727, 4748-4760; 41 RT 4806-4808, 4835-4839, 4924-4925; 43 RT 5083-5086, 5103-5105, 5178-5179; 44 RT 5386-5399; AOB 95-98.) During general voir dire, the court excused for cause a remaining CDCR employee, who had been assaulted by an inmate during his course of employment, because the employee indicated he would automatically assume a peace officer would give truthful testimony. (46 RT 5585-5586, 5595-5600.) The court, therefore, excused a majority of CDCR employees from the prospective jury pool for cause as appellant had requested.

917.) As established in section (A), *ante*, Barrett did not use all his peremptory challenges, and as discussed in section (B), *ante*, has not shown that Juror No. 12 was an impliedly biased incompetent juror. Thus, because he cannot show that the court's denial of his motion affected his right to an impartial jury or fair trial, his claim that the court's alleged error violated his due process rights by interfering with his ability to intelligently exercise peremptory challenges should be rejected outright.

To avoid this obvious outcome, Barrett argues a different standard should apply than that established by this Court in *Black*. He cites to the concurring opinion of Justice Liu as support for his argument. (SAOB 36-37.) However, the hypothetical scenario described in Justice Liu's concurrence is not applicable here. Justice Liu opined that prejudice "may occur when a trial court has erroneously denied multiple challenges for cause by the defense but not the prosecution, thereby forcing the defendant, but not the prosecution, to accept multiple jurors whom he would have lawfully struck had he not had to use his strikes to remedy the trial court's errors." (*People v. Black*, *supra*, 58 Cal. 4th at p. 922 (conc. opn. of Liu, J.).) This is not what occurred in this case. Justice Liu's hypothetical also requires a defendant to exhaust all peremptory challenges to successfully claim prejudice, which Barrett did not do. (*Ibid.*) And he recognized that a defendant cannot be said to have suffered substantial disadvantage from the seating of a single objectionable juror because neither side has the right to an ideal jury, and both sides must sometimes accept less-than-ideal jurors

given the limitations of the jury pool and available peremptory strikes. (*Ibid.*) Under Justice Liu's concurrence, Barrett still fails to establish prejudice because the record reveals only one seated juror whom he would have peremptorily challenged – Juror No. 12 – was "objectionable," which is insufficient to establish a "substantial disadvantage." (See *Ibid.*) Thus, Justice Liu's concurrence does not support his claim and this claim should also be rejected.

II. THE TRIAL COURT PROPERLY ADMITTED BARRETT'S 1986 CONFESSION TO THE UNCHARGED MURDER UNDERLYING THE PRIOR-MURDER SPECIAL CIRCUMSTANCE DURING THE PENALTY PHASE TRIAL

Barrett claims that his confession to his 1986 homicide of James Jackson was obtained in violation of his *Miranda* rights and since the time of the Opening Brief, additional authorities support his contention that his *Miranda* waiver was not knowing, intelligent, and voluntary. (SAOB 39-59; see also AOB 407-425 [Arg. XVI]; Reply 157-166.) Barrett forfeited his claim by effectively abandoning his motion to exclude the confession and by failing to object to its admission at trial. To avoid forfeiture, Barrett now asserts, as he did in his reply brief, that his counsel's failure to object on *Miranda* grounds constitutes ineffective assistance of counsel. (SAOB 59-62; see also Reply 165-166.) But he has failed to establish deficient performance or prejudice, and thus, this claim also fails.

Even if his claim is cognizable on appeal, it should be denied because the admission of Barrett's confession did not violate his constitutional rights. And the new authorities he cites, which mainly consist of law review articles and new laws that were not

in effect at the time of Barrett's confession, have no application to the validity of Barrett's *Miranda* waiver and admissibility of his prior murder confession. In any event, should this Court find error, any such error was harmless.

A. Barrett's claim is forfeited because he abandoned his motion to exclude the confession and failed to object to its admission at trial

It is well settled that a trial court has no sua sponte duty to exclude evidence. (*People v. Freeman* (1994) 8 Cal.4th 450, 490.) As a general rule, "the failure to object to errors committed at trial relieves the reviewing court of the obligation to consider those errors on appeal," and "this rule applies equally to any claim on appeal that the evidence was erroneously admitted, other than the stated ground for the objection at trial." (*People v. Landry* (2016) 2 Cal.5th 52, 86.) "The trial court cannot make such findings if a party fails to make a proper, specific, and timely objection, nor can we review the basis of the trial court's determination where no findings were made due to defendant's failure to have lodged the appropriate objection." (*Ibid.*) A judgement will not be reversed on the ground that evidence has been erroneously admitted unless "(a) There appears of record an objection to or a motion to exclude or to strike the evidence that was timely made and so stated as to make clear the specific ground of the objection or motion . . . ." (Evid. Code, § 353.) Barrett's claims are governed by this rule. (*People v. Mattson* (1990) 50 Cal.3d 826, 854 ["The general rule is that the defendant must make a specific objection on *Miranda* grounds at the trial level in order to raise a *Miranda* claim on appeal"].)

Although Barrett made a written motion in limine prior to the penalty phase attacking the validity of his *Miranda* waiver as to his 1986 murder confession, he argued that it was "excludable absent a proper foundation" because "there was no transcription of the advisement or assurance that [it] actually occurred." (46 CT 12960-12961.) He also argued that there was insufficient evidence that he understood the effect of the confession as a juvenile, and/or the interrogation was improper because his parents were not contacted. (46 CT 12961.) At the subsequent hearing on the motion, Barrett effectively abandoned his objection to the confession's admissibility after the People represented that Barrett was "*Mirandized*" and they planned to call police inspector, Frank McCoy, to testify about Barrett's interview and lay the foundation to admit Barrett's confession to the murder of Jackson. (74 RT 8936, 8938.) Counsel indicated his understanding that the confession "was probably going to come in," did not request an Evidence Code section 402 hearing, and instead objected to portions of the interview where Barrett described other misconduct regarding additional crimes that lacked corpus delicti. (74 RT 8938-8939; 76 RT 9004, 9006-9008, 9052-9068.) Later during trial, Inspector McCoy testified that he advised Barrett of his constitutional rights before questioning him about Jackson's murder, that Barrett understood those rights, he was willing to give up those rights and speak freely and voluntarily. (76 RT 9051-9052; see also 46 CT 13023.) Barrett did not object to the admission of the redacted confession, nor did he assert that McCoy's testimony failed to establish that his

waiver of his rights was not knowing, intelligent, and voluntary. (76 RT 9052-9068.) A redacted version of the audiotaped confession was admitted into evidence and played for the jury. (76 RT 9056; 3rd Supp. CT 426-467.) Defense counsel later questioned McCoy on cross-examination and commended him for the "professional job of interrogation" that he and his partner did in the case. (76 RT 9069.)

Barrett abandoned his motion to exclude his 1986 murder confession during the motion hearing by stating he understood the confession was probably coming into evidence after the prosecutor represented McCoy would testify to the foundation, without any argument as to why it should not, and then failed to object to the confession's admission after McCoy laid the foundation at trial. Thus, there was no timely objection pending on which the court could rule when Barrett's 1986 confession was admitted into evidence, and he failed to preserve the issue on appeal. (See *People v. Viray* (2005) 134 Cal.App.4th 1186, 1208 ["Ordinarily a court cannot commit error in the admission of evidence unless it is called upon to *rule* on an *objection* by a party"].) In addition, Barrett failed to secure a ruling from the trial court on the admissibility of his confession based on a violation of his federal rights and likewise failed to preserve that claim. (See *People v. Rowland* (1992) 4 Cal.4th 238, 259 ["[W]hen, as here, the defendant does not secure a ruling, he does not preserve the point. That is the rule. No exception is available"].)

People v. Linton (2013) 56 Cal.4th 1146 is instructive. In *Linton*, this Court determined that where a defendant did not

challenge the admissibility of statements made during a police interview on the ground that he was in custody for purposes of *Miranda* (and in fact conceded the defendant was not in custody), the claim was waived. (*People v. Linton*, *supra*, at p. 1166.) This Court reasoned that because the defendant did not object to the admissibility of the statement on this ground in the trial court, the theory was not litigated, and no opportunity was presented to the trial court to resolve any material factual disputes or make necessary factual findings. (*Ibid.*) Likewise, here, the trial court did not make a ruling on the admissibility of Barrett's confession on the ground that he did not knowingly and voluntarily waive his *Miranda* rights or that he failed to understand the effect of his confession as a juvenile because Barrett failed to object after McCoy laid the foundation for its admission. As a result, the theory was not litigated, and no opportunity was presented to the trial court to resolve any material factual disputes and make necessary factual findings. Like it did in *Linton*, this Court should find that Barrett has forfeited his claim that McCoy's interrogation violated *Miranda* or that his waiver of his rights was not knowing, intelligent and voluntary.

Barrett also argues, as did the defendant in *Linton*, that this court should consider the merits of his claim, despite having forfeited it, because it affects his core constitutional rights. (SAOB 58.) But this exception applies only to a narrow class of such rights, none of which are implicated here. (See *People v. Linton*, *supra*, 56 Cal.4th at p. 1166; *People v. Tully* (2012) 54 Cal.4th 952, 980, fn. 9 [applies only to double jeopardy and right

to jury trial].) Otherwise, "[c]onstitutional claims raised for the first time on appeal are not subject to forfeiture only when 'the new arguments do not invoke facts or legal standards different from those the trial court itself was asked to apply, but merely assert that the trial court's act or omission, insofar as wrong for the reasons actually presented to the court, had the additional legal consequence of violating the Constitution.'" (*Tully,* at pp. 979-980; *People v. Boyer* (2006) 38 Cal.4th 412, 441, fn. 17.) However, a party cannot argue the court erred in failing to conduct an analysis it was not asked to conduct. (*Tully*, at p. 980.) Such is the case here. The questions raised by Barrett's *Miranda* arguments – whether McCoy properly advised him of his *Miranda* rights and whether he knowingly, intelligently, and voluntarily waived those rights – involve analyses the trial court was not asked to conduct and potentially required factual bases additional to those adduced at trial or at the motion in limine hearing. (See *Ibid.*; see generally 74 RT 8936-8939; 76 RT 9051-9070.) Through his *Miranda* claims, Barrett asks this Court to invoke facts and legal standards he did not ask the trial court to apply. As a result, Barrett cannot avoid forfeiture based upon a deprivation of fundamental constitutional rights that are not within the narrow class of rights carved out as an exception by this Court.

Barrett relies on *People v. Anderson* (2020) 9 Cal.5th 946 in support of his claim that this Court should reach the merits despite the lack of objection below. (SAOB 58.) *Anderson* is inapplicable to his claim. In *Anderson*, a jury convicted the

defendant of five counts of robbery to which the operative information alleged personal firearm use enhancements that would have increased his sentence by up to 10 years on each count. (*Anderson*, *supra*, at p. 949.) But after the close of evidence, at the request of the People, the trial court instructed the jury on a set of more serious, 25-year-to-life firearm enhancements based on a different theory. (*Id.* at pp. 949-950, 951.) The jury returned true findings on those uncharged enhancements and the trial court enhanced Barrett's sentence for the robberies by five additional consecutive terms of 25 years to life. (*Id.* at p. 950.) The defendant did not object. (*Id.* at p. 961.) This Court determined that even though the defendant did not object, it could reach the merits because the trial court made an error that affected an important issue of constitutional law or a substantial right. (*Id.* at p. 963.) First, the error was clear and obvious because it imposed five 25-year-to-life enhancements that were never pleaded, in violation of statutory requirements. (*Ibid.*) Second, the error affected substantial rights by depriving the defendant of timely notice of the potential sentence he faced. (*Ibid.*) And third, the error was one that went to the overall fairness of the proceeding. (*Ibid.*)

By contrast, Barrett's claim is based on the admission or exclusion of evidence, which requires a timely objection in the trial court to preserve it for review. (*People v. Williams* (1998) 17 Cal.4th 148, 161, fn. 6.) Unlike *Anderson*, the trial court here did not violate mandatory provisions governing the length of confinement and there was no other "clear and obvious" error.

(Cf. *People v. Anderson*, *supra*, 9 Cal.5th at p. 961.) Nor did it commit an error which violated Barrett's fundamental due process rights or violate any other substantial right. (See *Id*. at p. 963; see §§ C and D, *post*.) Substantial rights are those where the alleged violation complained of results in a miscarriage of justice or, in other words, a deprivation of life or liberty. (Cal. Const. art. VI, § 13; *People v. Weatherford* (1945) 27 Cal.2d 401, 420; *People v. Watson* (1956) 46 Cal.2d 818, 835-836.) Finally, the error did not affect the overall fairness of the proceeding. (See § D, *post*.) Had Barrett objected to the admission of the confession after McCoy's initial testimony, the prosecution could have laid further foundation, and the trial court would have been required to make the necessary factual determinations. In sum, Barrett has forfeited his ability to raise this argument on appeal and his claim should be denied.

B. Barrett has not shown that his trial counsel's failure to object constituted ineffective assistance of counsel

Barrett alternatively claims that his right to effective representation was violated if this Court finds the *Miranda* issue forfeited. (SAOB 59.) To establish ineffective assistance, Barrett bears the burden of showing: (1) That counsel's performance was deficient, falling below an objective standard of reasonableness under prevailing professional norms, and (2) That absent counsel's error, it is reasonably probable that the verdict would have been more favorable to him. (*People v. Hernandez* (2004) 33 Cal.4th 1040, 1052-1053; see *Strickland v. Washington* (1984) 466

U.S. 668, 687.) Barrett has failed to establish either deficient performance or resulting prejudice.

"When examining an ineffective assistance of counsel claim, a reviewing court defers to counsel's reasonable tactical decisions, and there is a presumption counsel acted within the wide range of reasonable professional assistance." (*People v. Mai* (2013) 57 Cal.4th 986, 1009.) "It is particularly difficult to prevail on an *appellate* claim of ineffective assistance." (*Ibid.*) Such claims must be rejected on direct appeal if the record does not affirmatively show why counsel failed to object and the circumstances suggest counsel could have had a valid tactical reason for not objecting. (*People v. Mendoza Tello* (1997) 15 Cal.4th 264, 266-267.) "Unlike a later reviewing court, the attorney observed the relevant proceedings, knew of the materials outside the record, and interacted with the client, with opposing counsel, and with the judge." (*Harrington v. Richter* (2011) 562 U.S. 86, 105.)

Here, the record does not affirmatively show why counsel chose not to object to the admissibility of Barrett's confession based on an improper *Miranda* advisement or waiver. The question then is whether counsel could have had a valid tactical reason for not objecting. (*People v. Williams* (1997) 16 Cal.4th 153, 215.) Inspector McCoy gave unequivocal testimony that he advised Barrett of his constitutional rights, Barrett appeared to understand those rights, and voluntarily waived them. (See section C, *post*.) Counsel's decision to accept this foundation, without questioning McCoy further about the exchange or

objecting to the admission of the confession on foundational grounds, was entirely reasonable. (See *People v. Linton*, *supra*, 56 Cal.4th at p. 1168 ["Because there appears to have been no sound basis for counsel to have objected to the admission of defendant's bedroom statements on the grounds of a *Miranda* violation, no deficient performance by counsel has been established."].) It is also entirely possible that counsel knew, based on observations, materials, or conversations outside the record, that the appropriate warnings were given and chose not to make a futile objection. (See *Harrington v. Richter*, *supra*, 562 U.S. at p. 105.) Defense counsel may have determined that he would be unable to establish that the foundation was lacking or otherwise prevent the confession from coming into evidence. This is a satisfactory explanation for defense counsel's failure to object to the *Miranda* foundation. (See *People v. Lewis* (2001) 26 Cal.4th 334, 359 ["Where 'there was no sound legal basis for objection, counsel's failure to object to the admission of the evidence cannot establish ineffective assistance.'"].) Also, counsel may not have wanted to further highlight the confession by objecting to the advisement and thereby drawing more of the jury's attention to it. (See *People v. Williams*, *supra*, 16 Cal.4th at p. 215 ["As the People suggest, trial counsel may have decided not to object to Cox's testimony about defendant's fear of gang retaliation because an objection would have highlighted the testimony and made it seem more significant…"].) Instead, counsel focused on excluding portions of Barrett's confession that described other crimes he committed which would have been

damaging to Barrett and which were inadmissible because there was a lack of independent evidence of the crimes. (74 RT 8938-8939; 76 RT 9057-9064, 9066-9068.)

Barrett speculates that the confession would have been excluded on foundational grounds had counsel properly objected. (SAOB at 61.) But McCoy's testimony unambiguously established the foundation necessary for the admission of Barrett's confession. (See § C, *post*.) Although McCoy did not articulate each warning when testifying in front of the jury, there is nothing in the record to suggest that he could not have done so. Furthermore, even assuming arguendo the confession may have been excluded if an objection had been made, "[w]hether to object to inadmissible evidence is a tactical decision; because trial counsel's tactical decisions are accorded substantial deference [citations], failure to object seldom establishes counsel's incompetence." (*People v. Williams*, *supra*, 16 Cal.4th at p. 215, quoting from *People v. Hayes* (1990) 52 Cal.3d 577, 621.) Counsel may have decided by the time Inspector McCoy testified to let the confession come into evidence for strategic reasons. For example, knowing that evidence of the prior murder would be admitted, counsel may have wanted the jury to hear Barrett discuss the alleged provocation by the victim that led to the murder; specifically, that the victim, an adult, made sexual advances toward Barrett knowing he was a minor and after giving Barrett alcohol. (46 CT 13028-13039.) Thus, Barrett has not shown that his counsel's performance was deficient.

Barrett has also failed to show prejudice. Barrett cannot establish on this record that an objection based on any of the grounds herein would have been sustained. In addition, the jury's independent knowledge of Barrett's prior murder conviction and the overwhelming evidence of other aggravating circumstances establish that there is no reasonable probability that the jury would have returned a verdict other than death had they not heard Barrett's confession to the murder of Jackson. (See § D, *post*.) Thus, even assuming deficient performance by counsel, Barrett did not suffer prejudice as a result.

C. The totality of the circumstances establish that Barrett's *Miranda* waiver was knowing, intelligent and voluntary

Barrett contends that the People failed to establish his *Miranda* waiver was knowing and intelligent because, he claims, "they presented no evidence of what rights [Barrett] was advised of prior to his interrogation." (SAOB 44.) He further claims that his waiver was involuntary because he was a juvenile and recent developments in the law and literature recognize a juvenile's particular vulnerabilities to coercive interrogation techniques. (SAOB 47-50.) Contrary to his assertions, the record does establish that Barrett's waiver of his rights was knowing and voluntary. (76 RT 9051-9052.)

"[T]he determination whether statements obtained during custodial interrogation are admissible against the accused is to be made upon an inquiry into the totality of the circumstances surrounding the interrogation, to ascertain whether the accused in fact knowingly and voluntarily decided to forgo his rights to

remain silent and to have the assistance of counsel." (*Fare v. Michael C.* (1979) 442 U.S. 707, 724-725; *People v. Singh* (2024) 103 Cal.App.5th 76, 99; *People v. Cruz* (2008) 44 Cal.4th 636, 667.) The totality of the circumstances approach is adequate even for determining whether a juvenile waived his or her *Miranda* rights. (*Fare v. Michael C.*, *supra*, 442 U.S. at p. 725.) Such an approach includes evaluation of "the juvenile's age, experience, education, background, and intelligence, and into whether he has the capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and the consequence of waiving those rights." (*Ibid*.) The Supreme Court in *Fare*, *supra*, 442 U.S. 707, determined that the defendant, at 16 ½ years old, voluntarily and knowingly waived his *Miranda* rights because of his age, experience with the police, and prior arrests. (*Id*. at p. 726.) The High Court also considered the defendant's prior time in a youth camp, that he had been on probation, that there was no indication he was of insufficient intelligence to understand the rights he was waiving, or what the consequences of that waiver would be, and he was not worn down by improper interrogation tactics or lengthy questioning or by trickery or deceit. (*Id*. at pp. 727-727.)

Here, the totality of the circumstances establishes that Barrett's waiver was knowing, intelligent and voluntary. At trial, Inspector McCoy testified as follows:

> [Prosecutor]: Sir, when you saw Mr. Barrett, did he appear to be under the influence of alcohol?
>
> [McCoy]: No, sir.

[Prosecutor]: Did he appear to be under the influence of any drugs?

[McCoy]: No, sir.

[Prosecutor]: Did you advise him of his constitutional rights?

[McCoy]: Yes, sir.

[Prosecutor]: And why did you do that?

[McCoy]: Any time a police officer speaks to a person for the purposes of interrogation regarding a specific crime and he's a suspect, we're required to do so.

[Prosecutor]: And you did that in this instance?

[McCoy]: Yes, sir.

[Prosecutor]: And did he say that he understood each of those constitutional rights that you gave him?

[McCoy]: He did.

[Prosecutor]: Did he say that he was willing to give those up and speak to you about this freely and voluntarily?

[McCoy]: He did.

[Prosecutor]: And did he speak to you?

[McCoy]: Yes, sir.

[Prosecutor]: And did you tape record it?

[McCoy]: Yes, I did.

(76 RT 9051-9052.)

Although the specific *Miranda* warnings were not elicited during McCoy's testimony, McCoy articulated that he read Barrett the constitutional rights that are required to be given to a

suspect prior to an interrogation about a specific crime. (76 RT 9051-9052.) Those rights are, by definition, the right to remain silent and right to have counsel, retained or appointed, present during interrogation. (*Miranda v. Arizona*, *supra*, 384 U.S. at 473; *Fare v. Michael C.*, *supra*, 442 U.S. at p. 717.) There is no requirement that *Miranda* warnings be given in the exact form described in that decision and the rigidity of *Miranda* does not extend to the precise formulation of the warnings given a criminal defendant. (*Duckworth v. Egan* (1989) 492 U.S. 195, 202.) Indeed, the prophylactic *Miranda* warnings are not rights themselves but are measures to insure that the right against compulsory self-incrimination is protected. (*Id*. at p. 203, quoting *Michigan v. Tucker* (1974) 417 U.S. 433, 444.) McCoy's testimony was sufficient to establish the warnings of constitutional rights reasonably conveyed to Barrett his rights as required by *Miranda*.

Next, an evaluation of Barrett's age, experience, education, background, and his capacity to understand the warnings given, the nature of his Fifth Amendment rights, and the consequences of waiving those rights, show that his waiver was knowing and voluntary. (See *Fare v. Michael C.*, *supra*, 442 U.S. at p. 725.) At 16 years old, Barrett was on the older end of the juvenile age spectrum and the same age as the defendant in *Fare*. (*Id*. at p. 726; 46 CT 13024.) At the time of the interrogation, Barrett was living independently on the streets of San Francisco and surviving by his own means; his mother lived in another state and his father in another country. (46 RT 13024-13025.) Barrett

was involved in criminal behaviors such as using drugs, committing theft, buying and reselling stolen property, and using false identification to avoid getting picked up on a warrant. (46 CT 13036-13038, 13041, 13043-13045, 13047-13048, 13053-13054.) He described how he was able to support himself with under-the-table jobs and strong-arm robberies of homosexual males who tried to "pick [him] up." (46 CT 13056, 13060.) These facts point to Barrett understanding his rights and the consequences of waiving them because of his life experience, street smarts, experience with police, maturity, and sophistication.

Barrett's willingness to answer investigators' questions also supports the voluntariness of his *Miranda* waiver. Without any hesitation, Barrett willingly answered the investigators' questions after acknowledging he understood his *Miranda* rights, and expressly agreed to speak with them. (46 CT 13023.) The record further shows that Barrett knew he could refuse to answer questions and chose to talk anyway, as evinced by his refusal to answer certain questions posed by McCoy throughout the interview. Specifically, he refused to provide information about who he lived with, how to contact his father, to whom he sold the victim's VCRs, where he went after he left Jackson's apartment, and the name of a person whom he told about the murder. (46 CT 13025, 13051, 13053, 13060.) During the interview, Barrett told McCoy about how, earlier in the night when police first contacted him, he freely volunteered to the contacting officers that he murdered Jackson; another fact in support of his

willingness to speak to police. (46 CT 13046.) Barrett also said he had been arrested before and was not a stranger to the criminal justice system. (45 CT 13046 ["I know my fingerprints are on file because I have been arrested before"], 13050.) Barrett displayed sophistication and maturity during the questioning, such as when he went back and forth with McCoy regarding whether he would disclose to McCoy to whom he had sold Jackson's VCRs. (46 CT 13048-1050.) He confirmed that he understood what the investigators were saying. (46 CT 13066.) He understood, and asked questions about, the long sentence for committing murder. (46 CT 13068-13069.) Barrett then confirmed that there had been no promises made and that the investigators had treated him "extremely well." (46 CT 13069.) Barrett even stated, "I wasn't forced into a confession by any means;" and then confirmed that what he told uniformed officers, and the investigators, was free and voluntary. (46 CT 13069.) On this record, the circumstances of Barrett's interview sufficiently show that he intelligently, voluntarily, and knowingly waived his *Miranda* rights.

Nonetheless, Barrett argues that neuro- and social-scientific developments and recent legislation recognizing juveniles' vulnerability support his claim that his confession was not voluntary. Barrett's arguments are theoretical and untethered to the facts of this case. Barrett first points to two law review

articles[6] which discuss why adolescents exposed to trauma are more susceptible to coercion and are more passive and likely to acquiesce to a "default option." (SAOB 48-49.) He then concludes that he was more vulnerable to coercive interrogation dynamics than a typical teen. (SAOB 49.) However, the record proves the opposite – Barrett had been living independently from his parents, neither of which lived in the same state or country as Barrett, for some time and was surviving on his own on the streets of San Francisco. (46 CT 13024-13026, 13056, 13060.) Thus, rather than being vulnerable and passive, he was, in fact, criminally sophisticated, self-sufficient, and able to find work and survive on the streets of San Francisco on his own.

Barrett then points to two new laws regarding the interrogation of minors. (SAOB 49-50.) The first, effective January 1, 2021, established that a youth 17 years of age or younger shall consult with legal counsel prior to a custodial interrogation and before the waiver of any *Miranda* rights. (Welf. & Inst. Code, § 626.6, subd. (a).) The second, effective July 1, 2024, established that law enforcement officers, during a custodial interrogation of a youth 17 years old or younger, shall not employ threats, physical harm, deception, or psychologically manipulative interrogation tactics. (Welf. & Inst. Code, § 625.7.)

---

[6] Barrett cites to Pierce, *Juvenile Miranda Waivers: A Reasonable Alternative to the Totality of the Circumstances Approach* (2017) 2017 B.Y.U. L. Rev. 195 and Cleary, et al., *How Trauma May Magnify Risk of Involuntary and False Confessions Among Adolescents* (2021) 2 The Wrongful Conviction L. Rev. 173. (SAOB 48-49.)

As an initial matter, these laws were not in effect at the time of Barrett's 1986 police interview and thus have no application. Furthermore, and contrary to Barrett's claims that his waiver was involuntary and/or coerced, there is no evidence in the record that the investigators engaged in coercive, manipulative, threatening, deceptive, or physical harm tactics to compel a confession from Barrett. (See generally, 46 CT 13023-13069; *Colorado v. Connelly* (1986) 479 U.S. 157, 164, 167 [A defendant's mental condition, by itself and apart from its relation to official coercive police conduct, is insufficient to establish that a *Miranda* waiver and confession is not voluntary within the meaning of the due process clause]; *People v. Smith* (2007) 40 Cal.4th 483, 502 [Where police officers did not exploit the defendant's psychological vulnerabilities, viz-a-viz coercive activity, in order to obtain a statement from him, the confession may not be considered involuntary].) The record establishes that McCoy and the other investigators asked open-ended questions, did not pressure Barrett, made no promises or threats and did not deny him food or sleep. (See generally, 46 CT 13023-13069.) Barrett felt comfortable refusing to provide information and made a point to tell the investigators that they had treated him very well. (46 RT 13025, 13051, 13053, 13060, 13069.) Finally, investigators attempted to gather information about Barrett's parents, but Barrett refused to provide information of their whereabouts. (46 CT 13023-13025.)

In sum, the record establishes by a preponderance of the evidence that Barrett's waiver of his *Miranda* rights was voluntary, knowing, and intelligent.

D. Assuming Barrett's claim is cognizable, and the trial court erred, any such error was harmless

Statements admitted in violation of *Miranda* are reviewed under the *Chapman v. California* (1967) 386 U.S. 18, 24 standard of "harmless beyond a reasonable doubt." (*People v. Thomas* (2011) 51 Cal.4th 449, 498.) Here, even if the trial court had ruled Barrett's confession inadmissible, it is beyond a reasonable doubt that the jury would still have sentenced him to death.

When Barrett's 1986 confession was admitted during the penalty phase, the jury had already learned that he had previously committed a first degree murder. Barrett stipulated during the guilt phase trial that he had been convicted of first-degree murder in 1987 and, as a result, the jury found the prior murder special circumstance true. (73 RT 8896-8897; 46 CT 12953.) Evidence of the murder was also admitted during the penalty phase trial as a prior violent crime, and the prosecution would undoubtedly have done so even if the confession itself had been excluded. (§ 190.3, subd. (b).) Inspector McCoy testified that he investigated the homicide and determined that a ten-pound dumbbell had been used to kill Jackson and Barrett's fingerprints were on the dumbbell. (76 RT 9049-9051.) After the confession was played for the jury, McCoy testified that Barrett had accurately described the crime scene and the items Barrett said he had taken were consistent with items missing from the

apartment.[7] (76 RT 9072.) Thus, excluding the confession would not have kept the jury from learning about the murder.

Next, the details of the murder in that confession were no more inflammatory than the facts of the instant case. During his testimony about the victim of the charged murder, Barrett described a vicious attack during which he stabbed the victim repeatedly, even while the victim tried to retreat and block the attack. (58 RT 7577-7589; cf. 46 CT 13026-13042.) The medical examiner in the instant case confirmed that the victim suffered multiple stab wounds, six of which were potentially fatal, and referred to the attack as having an "element of overkill." (51 RT 6531-6540, 6551-6559.) On the other hand, during the interview, Barrett discussed the alleged provocation by the victim that led to the prior murder; specifically, that the victim, an adult, made sexual advances toward 16-year-old Barrett. (46 CT 13028-13039.)

The jury was also presented with overwhelming aggravating circumstances aside from the 1986 murder confession. First, the circumstances of the crime established that Barrett violently stabbed the victim by surprise, while his back was turned to Barrett, and stabbed the victim 13 times all over his body including the back of his head, liver, right lung, stomach, and heart. (51 RT 6522-6559; 59 RT 7578-7581, 7587-7588; 59 RT 7693-7969.) Second, Barrett showed no remorse at the time of

---

[7] The prosecution could have asked Inspector McCoy additional questions about the circumstances of Barrett's murder if the confession had been excluded—such as where the victim was killed and what items were taken from the apartment.

the murder, which was exhibited by declining to get help for the victim, disposing of incriminating evidence, and appearing calm, collected and unaffected by the killing. (48 5913; 49 RT 6056-6064, 6114-6115; 50 RT 6183-6187, 6259-6260, 6294-6295, 6310; 54 RT 7072; 59 RT 7590-7595, 7607, 7708-7710; 82 RT 9835-9837.) Third, evidence of prior crimes of violence consisted of two separate robberies of teenagers at knifepoint as they were coming home from school, robbing and beating an 80-year old man, slicing an acquaintance's neck and shoulder with a buck knife after his female friend refused to buy Barrett beer, and McCoy's testimony about the 1986 murder in which Barrett killed the victim by bludgeoning him to death with a dumbbell and then stole items from his apartment.[8] (75 RT 8959-8970, 8985; 76 RT 9011-9020, 9043-9044, 9050-9052; 9071-9072; 82 RT 9799-9800, 9827-9828.) And finally, there was evidence of appellant's long list of other violent acts while in prison, which included possessing weapons and assaulting other inmates and correctional officers on multiple occasions. (59 RT 7653-7670; 76 RT 9077-9105, 9110-9131, 9136-9143, 9146-9167; 77 RT 9179-9190, 9192-9201, 9203-9222, 9225-9261; 78 RT 9272-9274, 9281-9285, 9291-9308, 9311-9337, 9339-9356, 9358-9366, 9372-9374, 9379-9386; 9390-9398; 9417-9426.) Coupled with the limited circumstances in mitigation, the plethora of aggravating circumstances establish beyond a reasonable doubt that even if

[8] Again, even if Barrett's confession was excluded, the prosecution could still present other evidence of Jackson's murder under section 190.3, subdivision (b).

the jury did not hear Barrett's 1986 confession—and thus did not know some of the details of the prior murder—it would have returned a verdict of death. Accordingly, Barrett was not prejudiced, and his claim should be denied.

III. BARRETT'S CONVICTION FOR FIRST DEGREE MURDER AT AGE SIXTEEN WAS PROPERLY USED TO PROVE THE PRIOR MURDER SPECIAL CIRCUMSTANCE

In his Opening Brief, Barrett argues the prior-murder special circumstance must be reversed because it violates the Eighth and Fourteenth Amendments to render a defendant eligible for the death penalty based on an offense committed when the defendant was a child. (AOB 374-383 [Argument XIII].) In his supplemental opening brief, he contends that changes in the law governing the treatment of juvenile offenders and more recent attitudes regarding the lesser culpability of youthful offenders render the use of murders committed as a juvenile for purposes of a prior-murder special circumstance unconstitutional. (SAOB 63-72.) As this Court has aptly held, there is no constitutional impediment to an adult being rendered eligible for the death penalty based upon having sustained a prior murder conviction for a murder committed as a juvenile. (*People v. Smith* (2018) 4 Cal.5th 1134, 1178; *People v. Salazar* (2016) 63 Cal.4th 214, 226.) As explained below, nothing in Barrett's Supplemental Opening Brief alters the analysis or conclusion of this Court upholding the constitutionality of the prior murder special circumstance based on prior murders committed while a juvenile.

Barrett extrapolates from *Roper v. Simmons* (2005) 543 U.S. 551 a recognition that juveniles are less culpable for their crimes than adults. (SAOB 63.) But as this Court has already explained, *Roper* "does not bar the use of a prior murder committed when the defendant was a juvenile as a special circumstance qualifying the defendant for the death penalty." (*People v. Smith*, *supra*, 4 Cal. 5th at p. 1178; citing *People v. Salazar*, *supra*, 63 Cal.4th at p. 226.) This is because "'[i]t does not violate the Eighth Amendment for the Legislature to conclude, as a matter of policy, that an adult who murdered as a juvenile, failed to learn from that experience, and killed yet again, is a person "within the narrowed class of murderers for whom death would be an appropriate penalty." [Citation.] The punishment is not imposed for the juvenile offense, but for the crime committed as an adult, considered in light of the defendant's criminal history.'" (*Id.*) To be sure, Barrett's mentality at the time he committed the "capital murder" was no different than the mentality of any other 26-year-old who commits first degree premeditated and deliberate murder, while knowing that (1) he has committed precisely such conduct in the past (whether it was as an adult or a juvenile), and (2) he was convicted for such conduct.

Barrett speculates that in light of our improved "understanding of the adolescent brain and the laws reflecting it, it is exceedingly unlikely that Mr. Barrett would be prosecuted and convicted of first degree murder as an adult if he were charged with the Jackson homicide today." (SAOB 66.) But as

this Court has made plain, Barrett is not being punished for his prior murder, rather he was rendered eligible for the death penalty based on the increased culpability from committing murder after having been previously convicted of murder. (*People v. Smith, supra*, 4 Cal. 5th at p. 1178; *People v. Salazar*, *supra*, 63 Cal.4th at p. 226.) And his prior murder was also properly considered by the jury in determining whether death was the appropriate penalty for the murder he committed as an adult. (*People v. Salazar, supra*, 63 Cal.4th at p. 225, citing *People v. Bivert* (2011) 52 Cal.4th 96, 122-123.)

Barrett identifies the most relevant of the developments in the law as the changes to the juvenile transfer laws. (SAOB 68.) But as this Court has observed: "'[t]he prior-murder special circumstance does not turn on the procedures underlying the prior conviction, but on the gravity of the conduct that is the necessary predicate of that conviction.'" (*People v. Smith, supra*, 4 Cal.4th at p. 1178, quoting *People v. Salazar, supra,* 63 Cal.4th at p. 227.)

Barrett contends that the prior-murder special circumstance does not reliably perform its eligibility function because it does not permit recognition of the lesser culpability of youth and thus is not reliably classifying the "worst offenders" which was "the very issue at the heart of *Roper*." (SAOB 72.) But as this Court has held, "[a]dults who commit first degree murder despite having a previous murder conviction, whether or not the prior offense occurred when they were juveniles, are a distinct subclass of murderers that can 'with reliability be classified among the

worst offenders.'" (*People v. Salazar, supra,* 63 Cal. 4th at p. 226, quoting *Roper, supra,* 543 U.S. at p. 569.)

Lastly, Barrett argues if the prior-murder special circumstance is invalid, then he is prejudiced as a result. (SAOB 73.) Of course, Barrett was death eligible based on the lying-in-wait special circumstance and his conviction under Penal Code section 4500. But Barrett focuses on the prior-murder special circumstance finding as allowing the jury to not only know that another factfinder found him guilty of the prior murder beyond a reasonable doubt, but also that he was deemed worthy of adult prosecution and punishment, instead of a juvenile adjudication. (SAOB 73.) He also contends the effect of such evidence would undermine the mitigating value of his youth in the penalty phase. (*Id*.) As noted in the Respondent's Brief, even if the prior murder special circumstance were reversed, the universe of the appropriate considerations during the penalty phase would remain the same. (RB 187, 192.) But given the evidence in aggravation, including the circumstances of the current murder and his lengthy history of committing violent crimes both before and after he was incarcerated, there is no reasonable possibility that the jury would have returned other than a death verdict, but for consideration of the prior-murder special circumstance. (See Arg. II(D), *ante*.)

In the present case, the evidence in aggravation was overwhelming. Thus, even if consideration of the prior-murder special circumstance was in error, appellant was not prejudiced, and his claim should be denied.

CONCLUSION

For the foregoing reasons, Respondent requests that the judgment be affirmed in its entirety.

Respectfully submitted,

ROB BONTA
Attorney General of California
LANCE E. WINTERS
Chief Assistant Attorney General
JAMES WILLIAM BILDERBACK II
Senior Assistant Attorney General
KRISTINE A. GUTIERREZ
Deputy Attorney General

S/ ANNE SPITZBERG
ANNE SPITZBERG
Deputy Attorney General
Attorneys for Plaintiff and Respondent

February 6, 2025

CERTIFICATE OF COMPLIANCE

I certify that the attached Supplemental Respondent's Brief uses a 13-point Century Schoolbook font and contains 11,365 words.

ROB BONTA
Attorney General of California

S/ ANNE SPITZBERG
ANNE SPITZBERG
Deputy Attorney General
Attorneys for Plaintiff and Respondent

February 6, 2025

SD2004XS0003
84950669.docx

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **PEOPLE v. BARRETT (JOSEPH ANTHONY)**
Case Number: **S124131**
Lower Court Case Number:

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **anne.spitzberg@doj.ca.gov**

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
SUPPLEMENTAL BRIEF	Supplemental Respondent's Brief

Service Recipients:

Person Served	Email Address	Type	Date / Time
Anne Spitzberg California Department of Justice Office of the Attorney General 234534	anne.spitzberg@doj.ca.gov	e-Serve	2/6/2025 8:54:09 AM
Office Office Of The State Public Defender - Ok Lisa M. Romo, Deputy State Public Defender	romo@ospd.ca.gov	e-Serve	2/6/2025 8:54:09 AM
Attorney Attorney General - San Diego Office Holly D. Wilkens, Supervising Deputy Attorney General	sdag.docketing@doj.ca.gov	e-Serve	2/6/2025 8:54:09 AM
Christina Spaulding Office of the State Public Defender 228631	christina.spaulding@ospd.ca.gov	e-Serve	2/6/2025 8:54:09 AM
Attorney Attorney General - San Diego Office Holly D. Wilkens, Supervising Deputy Attorney General 88835	Holly.Wilkens@doj.ca.gov	e-Serve	2/6/2025 8:54:09 AM
Jessica Hawk Office of the State Public Defender 278762	jessica.hawk@ospd.ca.gov	e-Serve	2/6/2025 8:54:09 AM
Lisa Romo Office of the State Public Defender 134850	lisa.romo@ospd.ca.gov	e-Serve	2/6/2025 8:54:09 AM
Imperial County District Attorney	ICDA@co.imperial.ca.us	e-Serve	2/6/2025 8:54:09 AM
Imperial County Superior Court Pro Per	appellateclerk@imperial.courts.ca.gov	e-Serve	2/6/2025 8:54:09 AM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

2/6/2025

Date

/s/Kimberly Wickenhagen

Signature

Spitzberg, Anne (234534)

Last Name, First Name (PNum)

California Department of Justice Office of the Attorney General

Law Firm