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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

KENNETH RAY NEAL,

Defendant and Appellant.

F036055

(Super. Ct. No. 41889)

OPINION

APPEAL from a judgment of the Superior Court of Tulare County. Gerald F. Sevier and Patrick J. O’Hara, Judges.†

Victor J. Morse, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, David P. Druliner, Chief Assistant Attorney General, Robert R. Anderson, Assistant Attorney General, Louis M. Vasquez and Lloyd G. Carter, Deputy Attorneys General, for Plaintiff and Respondent.

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† Judge Sevier presided over appellant’s trial; Judge O’Hara presided over appellant’s sentencing hearing.

STATEMENT OF THE CASE

On April 6, 1999, the Tulare County District Attorney filed a felony complaint in the Porterville Division of superior court charging appellant with murder (Pen. Code, § 187,¹ subd. (a)), a serious felony (§ 1192.7, subd. (c)).

On May 11, 1999, the superior court conducted a preliminary hearing and denied appellant's motion to suppress evidence of a confession based on alleged coercion by law enforcement officers.

On May 26, 1999, the district attorney filed an information in superior court charging appellant as follows: count I--murder (§ 187, subd. (a)), a serious felony (§ 1192.7, subd. (c)); and count II--infliction of corporal injury upon a dependent adult (§ 368). As to both counts, the district attorney specially alleged appellant inflicted great bodily injury (§ 1203.09, subd. (a)), and as to count II, the district attorney specially alleged appellant proximately caused the death of the victim.

On May 27, 1999, appellant was arraigned, pleaded not guilty to the substantive offenses, and denied the special allegations.

On October 5, 1999, appellant filed a motion to set aside the information (§ 995) on the grounds he was committed without probable cause and that his statements to law enforcement officers were involuntary.

On November 22, 1999, the People filed written opposition to appellant's motion to set aside the information.

On November 23, 1999, the court conducted a contested hearing on the motion and took the matter under submission. On December 20, 1999, the court denied the motion to set aside by detailed minute order.

On January 10, 2000, jury trial commenced.

¹ All further statutory references are to the Penal Code unless otherwise indicated.

On January 18, 2000, the court dismissed count II on motion of the People. On the same date, after six days of trial, the jury returned verdicts finding appellant guilty of second degree murder, a lesser crime of that charged in count I.²

On April 3, 2000, appellant filed a motion to modify the verdict or for new trial.

On April 10, 2000, the People filed written opposition to the defense motion.

On May 3, 2000, appellant filed a supplemental pleading in support of his motion.

On May 9, 2000, the court denied appellant's motion for new trial and/or modified verdict, denied probation, and sentenced him to a term of 15 years to life in state prison with the possibility of parole. The court imposed a \$5,000 restitution fine (§ 1202.4) and imposed and suspended a second such fine pending successful completion of parole (§ 1202.45). The court awarded appellant 402 days of custody credits, directed him to participate in a counseling or education program with a substance abuse component (§ 1203.096), and directed him to provide fluid samples and fingerprints for DNA testing (§ 296).

On July 7, 2000, appellant filed a timely notice of appeal.

STATEMENT OF FACTS

In 1999, 69-year-old Don Collins lived at Sequoia Dawn, an apartment complex for retirees in Springville, Tulare County. Collins was a big man, standing six feet, three

² Before the court instructed the jury on January 18, 2000, the prosecutor stated during an in camera exchange:

“... It's the People's position we would [be] going [forward] on Count 1 only, the charge of murder, and there's a special allegation attached to Count 1 regarding great bodily injury on an elderly victim. It adds no additional time. It's just a presumptive state prison. I believe under the presumptive state prison under either murder or manslaughter, as well, and we would not submit that to the jury, either, as just not affecting any custody time, just unduly confusing to the jury given the facts of the case.”

inches tall and weighing 240 pounds. The then 18-year-old appellant was a friend of Collins who had come to live with him in March 1999. Appellant weighed approximately 144 pounds. Collins often referred to appellant as his grandson but appellant usually called Collins by his first name. Collins had met appellant a few years earlier at a group home where appellant was a resident and Collins was an employee.

Ross Lambert was an 85-year-old friend of Collins and appellant. Lambert said he gave \$150 to Collins in early March 1999. Collins in turn wired the money to appellant so he could travel to California. Western Union receipts indicated that Collins sent money to appellant on February 6, 12, and 14, 1999.

On Sunday morning, April 4, 1999, appellant and Lambert repeatedly tried to telephone Collins from Lambert's residence. When Collins failed to answer, Lambert became worried. Lambert had last seen Collins the previous day when he and appellant were shopping together at Gifford's Market. The market was located one and one-half blocks from Lambert's home.

After receiving no answer, appellant and Lambert went to Collins's apartment. Appellant drove them there in Collins's car. Lambert said it was not unusual for appellant to drive Collins's car. When they arrived, appellant used his key to open the apartment door and then gestured to Lambert to enter first. Collins's dog, "Snuggles," rushed up to Lambert. Lambert hollered for Collins but received no answer. Lambert and appellant walked through a hallway, entered the living room and found Collins seated in a chair. Lambert said his body was "cold as ice." Lambert called 911 while appellant attempted to resuscitate Collins. Collins's body leaned to one side and there appeared to be blood on the right side of his chest. Lambert became "shook up" by Collins's condition and appellant appeared upset and cried.

Emergency Medical Technician (EMT) Aldo Gonzalez arrived at Collins's apartment, number 116, at noon. Tulare County Deputy Sheriffs Brian Clower and Douglas Babb arrived a short time later. Appellant and Lambert were standing outside

the apartment and the door was open. Gonzalez said Collins was dead but seated upright in an easy chair. His body exhibited lividity and rigor mortis and his skin was cold. Tulare County Sheriff's Detective Mario Martin said ligature marks were apparent on his neck. Deputy Clower saw blood spots on Collins's body but no apparent cuts, scrapes, or wounds. Deputy Sheriff David Corral said Collins's watch, checkbook, and wallet appeared undisturbed. The wallet contained cash and credit cards.

EMT Gonzalez noticed two cheeseburgers on an electric griddle and thought they had been there for a long period of time. The fan over the kitchen stove was on and blood was splattered on the floor and wall. Deputy Clower said there was no sign of a forced entry or a struggle in the living room or the bedroom. Tulare County Sheriff's Sergeant Brian Johnson, a member of the sheriff's crime laboratory team, said Collins's eyeglasses were on a table and a kitchen knife was located on the kitchen counter. A five-foot electrical cord was located nearby and the griddle was missing its cord.

Sergeant Johnson found a handwritten note on the dining room table. The note read:

“Dad Im Sorry [¶] I ... did not [¶] mean it realy [¶] Your foster son [¶] Jon Adkins. [¶] 3/4/99 [¶] morning Bitch [¶] ass [¶] J.A.”

According to Lambert, John Adkins was a friend of Collins and a compulsive liar. Collins also knew Adkins from a group home. Adkins had lived with Collins for about 18 months and had stolen from both Lambert and Collins. Collins told Lambert that Adkins was extremely jealous of appellant. Lambert heard Collins and Adkins arguing a week before appellant came to stay with Collins.

At the crime scene, appellant told Deputy Clower he was Collins's grandson and only living relative. Appellant asked permission to take some of Collins's possessions. Clower did not permit appellant to enter the apartment because it had been secured as a crime scene and appellant could not prove he was a relative.

When Deputy Babb questioned appellant, he said he had come to the apartment that morning and found Collins dead. He also said he was Collins's grandson and next of kin. Appellant had a key to the apartment and gave it to Babb. Appellant said Collins had purchased a lot of food the day before and appellant asked permission to remove the food from the apartment.

When Detective Mario Martin arrived at the scene, he asked appellant to write a short statement about his observations. He also told appellant he was not under arrest. Martin also interviewed Lambert while appellant wrote out the statement. Appellant explained he had spent the previous night at Lambert's residence and that he and Lambert went to Collins's apartment after repeatedly attempting to reach him by telephone that morning. They arrived, found Collins in his chair, and determined he had no pulse.

Martin asked appellant to accompany him to the Porterville Sheriff's station to conduct a taped interview and appellant agreed. At the station, Martin left appellant in an interview room and asked him to write a second, more detailed statement. Appellant wrote out a statement that was similar to his first written statement.

Martin then interviewed appellant and audiotaped the interview.³ Appellant explained he had first met Collins five or six years earlier. Appellant was a resident of a Porterville group home and Collins was a counselor there. Collins taught him how to read and do homework. In 1996, appellant was released from probation in California and

³ The jury listened to two audiotapes and viewed one videotape of appellant's three interviews with Detective Martin and had access to transcripts of those interviews. People's exhibit No. 5 was the audiotape of the first interview and People's exhibit No. 3 was the transcript of that interview. People's exhibit No. 7 was the audiotape of the second interview and People's exhibit No. 8 was the transcript of that interview. People's exhibit No. 26 was the videotape of the third interview and People's exhibit No. 10 was the transcript of that interview. The court admitted the tapes into evidence but not the transcripts.

moved “back east.” Appellant said he recently returned to California because he had lost his job on an oil rig in Oklahoma. Collins sent him \$100 to buy a bus ticket to California. Appellant considered Collins a “grandpa” to him.

Appellant told Martin he had been staying with Collins the preceding three or four weeks. However, appellant claimed he spent the last few nights with Lambert and had not seen Collins since three days earlier. Appellant explained he had spent the previous day with a girl named Sara and had then spent the night at Lambert’s residence.

Appellant explained that John Adkins was the only person he knew who could possibly want to kill Don Collins. Adkins was Collins’s 32-year-old foster son and lived in Fresno. Collins told appellant that Adkins had once stolen a lot of money from him. Appellant said he had not seen the note bearing Adkins’s name in Collins’s apartment.

During the interview, Martin asked appellant about some faint red marks and scrapes on the back of appellant’s hands. Appellant said he had been in a fight with “some dude” in Porterville, but declined to elaborate. Appellant became defensive when questioned about his whereabouts and conduct. Nevertheless, he denied killing Collins. Martin told appellant he believed he was lying and continued to question him, even after appellant requested an attorney. Martin admitted employing a technique to obtain a statement even if it would violate appellant’s *Miranda* rights.

Martin ultimately arrested appellant. Although he noticed redness and scratching on the back of appellant’s hands, Martin did not see any other injuries, cuts, scrapes, or bruises on his person. Appellant provided a handwriting sample during the booking process.

The following day, April 5, 1999, Detective Martin learned appellant wanted to speak with him. Martin interviewed appellant at noon and recorded the interview on audiotape. Appellant admitted killing Collins the night before he and Lambert reported his death. Appellant said he was only trying to scare or intimidate Collins but then went

too far. Appellant said he used a kitchen knife to cut the ends off the electric cord from the griddle and then used the cord to strangle Collins.

Appellant claimed he was not drunk at the time of the homicide but said he was “buzzin’” after consuming “two or three drinks of Vodka” at Lambert’s residence about two or three hours earlier. Appellant said he did not realize what he was doing. Appellant and Collins argued about what to watch on television and had “disrespect[ed]” each other. Collins eventually shouted, “Well God damn it, it’s my fuckin’ house.” Appellant spent the next 30 minutes just thinking about killing Collins. He finally went behind Collins, wrapped the cord around his neck, and strangled him for somewhere between three and seven minutes.

Appellant demonstrated to Martin how he wrapped the cord around his hands before he strangled Collins. He said he was not “thinking straight,” but just “snapped” on the “spur-of-the-moment.” After appellant killed Collins, he wrote the note and wiped surfaces around Collins’s apartment to eliminate his fingerprints. Appellant stated the blood in the apartment “was from the dog having her period, she was in heat.” Appellant drove away from Collins’s residence, parked on a dirt road, and stayed out all night. The next morning he went to Lambert’s residence. Appellant told Lambert he should say appellant had spent the night at his residence if anyone were to ask. Appellant and Lambert telephoned Collins’s residence, then drove there and found Collins’s body just where appellant had left it.

On the afternoon of April 5, 1999, Martin again interviewed appellant and this time videotaped the interview. Appellant again explained that Collins sent him \$100 when appellant was in Oklahoma, and that appellant came to Porterville and stayed with Collins for two or three weeks. He repeated his earlier explanation about drinking two vodkas at Lambert’s residence and then returning to Collins’s residence. Appellant said Collins raised his voice to him after they argued about choosing a television show. Appellant became angry but nevertheless sat with Collins for 30 minutes before he did

anything. Appellant said he did not plan to kill Collins. Rather, he just wanted to intimidate him but ended up going “all the way.” Appellant cut the cord and wrapped it around his hands. He approached Collins from behind as he sat in his chair watching television. Appellant wrapped the cord around Collins’s neck and pulled the cord tight for two or three minutes until Collins was dead. Appellant said he wrote a note bearing John Adkins’s name because he wanted to shift the blame to someone else and Adkins was the only person he could think of at the time. Appellant disposed of the ends of the electrical cord in the dumpster at Gifford’s Market.

During this interview, appellant told Martin he had been very angry with Collins for some time. Appellant explained Collins had twice tried to grab appellant’s penis when the latter was sleeping. Appellant said he slapped Collins’s hand away on each occasion. Despite Collins’s advances, appellant remained at his apartment because he had nowhere else to go.

Leonard Miller, M.D., a forensic pathologist, performed an autopsy on the body of Don Collins. He observed a ligature impression on the front of Collins’s neck that extended from ear to ear. The impression was one-half inch thick. Dr. Miller observed no evidence of any injuries, such as bruises or abrasions that could have resulted from a struggle. Miller testified the evidence was consistent with strangulation by an electrical cord. He said the cause of death was aspiration of vomit as a result of the ligature strangulation. The medical evidence indicated that ligature force was applied for a substantial period of time, anywhere from three to seven minutes. According to Dr. Miller, Collins had a blood alcohol level of 0.07 grams.

James Blanco, a handwriting expert and questioned documents examiner, analyzed the note found near Collins’s body. He compared it to appellant’s two written statements and the handwriting exemplar appellant completed at Martin’s request. Blanco concluded appellant wrote the note. However, the parties stipulated to the findings of Richard W. Kinney, latent print analyst at the California Department of Justice Regional

Crime Laboratory in Fresno. Kinney processed the note and found one usable latent print. Kinney analyzed and compared the fingerprint with appellant's fingerprints and found they did not match.

Defense

Appellant testified at length about his relationship with Don Collins. Collins had been employed as a counselor at a group home where appellant resided when he was a teenager. As a counselor, Collins had taken appellant to school, tutored him, and talked to him about his family, his problems, and his childhood molestation. Appellant was enrolled in special education classes and failed to graduate from high school. Collins gave appellant special treatment in the group home. He took appellant places and bought him alcohol and drugs.

When appellant was 15 or 16 years old, he became upset with Clarence Ogans, the director of the group home. Collins helped appellant escape the home with a friend named Bobby Lemons. Appellant and Lemons stayed at Collins's apartment for nine or ten days. Appellant then went to stay with his aunt, Betty Mead, who resided somewhere else in California. On a few occasions, Collins telephoned and visited appellant at his aunt's residence, took him out to eat, and bought him clothes. Appellant ultimately left California, stayed with his mother in Missouri, and then moved to Oklahoma to work on an oil rig. While appellant was in Oklahoma, Collins corresponded with him, telephoned him, and sent him money for a bus ticket to California. When appellant returned to California, he lived with Collins. Collins bought him clothes and let him drive his car. On two occasions, Collins tried to grab appellant's penis when the latter was sleeping. Each time, appellant slapped Collins's hand and told him not to touch him. Appellant said he did not leave because he had nowhere else to go.

On the day of the homicide, appellant, Collins, and Lambert went shopping for groceries. They also spent some time together at Lambert's residence. Appellant had three or four drinks of vodka but Collins did not drink. By the time appellant and Collins

left Lambert's place, appellant felt drunk. They returned to Collins's apartment, appellant went to Collins's bed, and fell asleep.

Appellant said he woke up and found Collins on top of him, trying to remove appellant's pants. Appellant thought Collins wanted to have sex with him. Appellant struggled with Collins and succeeded in stopping his advances. Appellant cussed at Collins and the latter apologized for his conduct. Appellant got off the bed and sat in a chair but remained angry with Collins. He became angrier when he thought about the two previous occasions when Collins tried to grab appellant's penis.

Two or three minutes after he sat down, appellant got up, went into the kitchen, and disconnected the electrical cord from the griddle. He then approached Collins from behind and strangled him with the cord. Collins was seated in an easy chair at the time. Appellant said when he first put the cord around Collins's neck, he just wanted to scare him. However, he ended up killing him. Appellant claimed he was not aware of what he was doing. After appellant killed Collins, he wrote the note to try to "frame" Adkins for the killing. Appellant cut the cord and disposed of the fragments, wiped away fingerprints in Collins's apartment, and later asked Lambert to say that appellant had been at his residence the entire evening.

Appellant said he told Detective Martin whatever he thought the detective wanted to hear so that he would leave appellant alone. Appellant told Martin he and Collins had a dispute over a television show and following the dispute he spent 30 minutes getting angrier. Appellant testified he made incriminating statements to Martin during the interviews because he thought that was what Martin wanted him to say. Appellant said he never told Martin about Collins's attempt to remove appellant's pants just prior to the killing. Appellant said he was concerned the information would appear in the news and that people would think he was a "pervert." Appellant said he was anxious to finish each interview. He did not have anything to eat from 12:00 noon on April 4 to 9:30 or 10:00 p.m. on April 5, 1999.

Appellant acknowledged that a photograph of Collins's bed showed covers that did not appear to have been disturbed at all. Appellant also acknowledged his aunt lived in nearby Porterville. Although he had stayed with her once before, he did not leave Collins's residence and go to his aunt's home following Collins's alleged sexual advances. Appellant explained he did not go to his aunt's home because he felt she did not like him.

Bobby Lemons was a teenage boy who lived at the group home at the same time appellant was a resident and Collins was a counselor. According to Lemons, Collins bought beer and "weed" for appellant, Lemons, and other boys. On one occasion, appellant and Lemons ran away from the home. Collins was waiting for them but told them only appellant could stay at his home. Appellant persuaded Collins to allow Lemons to stay also. The two boys stayed with Collins for two weeks. Lemons slept in a chair and appellant slept in a bed with Collins.

Deanna Hilt, appellant's mother, knew Collins when appellant was a resident of the group home. Collins brought appellant to see her in Tulare on several occasions. Collins sometimes permitted the unlicensed appellant to drive his car. After Hilt moved to Missouri, appellant left California and lived with her for a time. However, appellant returned to California when Collins sent him money for his travel expenses.

Clarence Ogans ran the nonprofit organization that operated the group home where appellant had been a resident. Ogans said Collins had been employed as a childcare counselor in the home. At one time, Ogans felt that Collins violated the organization's prohibition against favoring one resident over the others. However, Ogans declined to elaborate.

Lori Milinich worked at the group home with Collins. She thought Collins was too lenient with the residents. According to Milinich, Collins would usually have a favorite resident and "he would always have to tuck that one in . . ."

Defense investigator Clifford Webb found textbooks entitled “‘The Male From Infancy to Old Age’” and “‘Human Sexuality’” in Collins’s apartment. Inside one of the texts was a paper-clipped page with illustrations of male genitals and a newspaper article about masturbation. Webb also testified that someone had highlighted a section of one of the books on the topic of inflammation of the prostate gland.

DISCUSSION

Appellant contends the trial court committed reversible error by admitting evidence of his confession.

He specifically argues:

“The defense unsuccessfully moved to exclude appellant’s confession from evidence, contending that appellant’s incriminating statements were made involuntarily and that appellant did not knowingly, intelligently, and voluntarily waive his constitutional rights to counsel and to remain silent pursuant to *Miranda v. Arizona* (1966) 384 U.S. 436 As a result of the trial court’s denial of his motion, the jury heard appellant’s incriminating statements at trial, and convicted him of second degree murder. [¶] . . . [¶]

“The evidence in this case demonstrates that appellant made his incriminating statements involuntarily, and that his waiver of his *Miranda* rights was not knowing, intelligent, or voluntary. The crucial evidence bearing on both inquiries concerns Detective Martin’s misconduct, Martin’s threats and promises to appellant, and the coercive conditions of appellant’s confinement at the sheriff’s station.

“Martin admitted that he deliberately violated appellant’s *Miranda* rights when he continued to question him following his repeated invocations of his right to counsel. . . . More importantly, Martin’s misconduct could only have convinced appellant that the purported right to counsel Martin had advised him about was in fact nonexistent. Thus appellant could not be said to have ‘understood,’ at the time he waived his *Miranda* rights, that he was truly entitled to consult with counsel. Accordingly, his waiver could not have been knowing, intelligent, or voluntary. Furthermore, Martin’s misconduct had a coercive effect that resulted in appellant making an involuntary confession. . . .

“ . . . As Martin took no steps to clarify that appellant was indeed entitled to counsel, despite Martin’s misconduct on the first day of interrogation, appellant’s initiation of contact with Martin on the second day of interrogation cannot be viewed as an independent intervening cause that would dispel the taint of Martin’s misconduct. Therefore Martin’s deliberate violation of appellant’s *Miranda* rights not only rendered appellant’s subsequent waiver of his rights invalid, it had a coercive effect that resulted in appellant making his incriminating statements involuntarily.

“Moreover, the abusive conditions of appellant’s confinement at the sheriff’s station had a coercive effect which contributed to appellant making an involuntary confession. Appellant’s testimony at the pretrial hearing provided undisputed evidence that he was put in a holding cell and deprived of food, water, and a toilet for a substantial period of time prior to his confession. . . .

“Similarly, the evidence concerning Detective Martin’s threats and promises indicates that appellant’s confession was coerced. Martin warned appellant on the first day of his interrogation, ‘if you don’t cooperate, the systems [*sic*] gonna stick it to you as hard as they can,’ with a charge of ‘first degree murder or whatever.’ . . . On the second day, Martin promised appellant that he would write a letter to his mother, promised him that he would give him a couple of cigarettes, and agreed to appellant’s request that Martin ‘tell them that [appellant] helped [Martin] out so they’d help [appellant] out when [appellant went] to court.’ . . .

“ . . . [T]he evidence compels the conclusions that appellant’s waiver of his constitutional rights pursuant to *Miranda* was invalid, and that appellant’s incriminating statements were involuntarily made. . . .”

In *Miranda v. Arizona*, *supra*, 384 U.S. 436, the United States Supreme Court determined that the Fifth and Fourteenth Amendments’ prohibition against compelled self-incrimination required that custodial interrogation be preceded by advice to the defendant that he has the right to remain silent and also to the presence of an attorney. The failure to administer *Miranda* warnings creates a presumption of compulsion. Consequently, unwarned statements that are otherwise voluntary within the meaning of the Fifth Amendment must nevertheless be excluded from evidence under *Miranda*. However, if an un-*Mirandized* statement is voluntary, any subsequent statement made pursuant to a voluntary and informed waiver is admissible in the prosecution’s case-in-

chief. The absence of any coercion or improper tactics undercuts the twin rationales-- trustworthiness and deterrence--for a broader rule. Once warned, the suspect is free to exercise his or her own volition in deciding whether or not to make a statement to the authorities. The state must demonstrate the voluntariness of a confession by a preponderance of the evidence. (*People v. Bradford* (1997) 14 Cal.4th 1005, 1033.)

If the defendant receives *Miranda* warnings and thereafter requests counsel, the interrogation must cease until an attorney is present. Interrogation consists of words or actions on the part of the police that they should know are reasonably likely to elicit an incriminating response. However, if the defendant thereafter initiates a statement to police, nothing in the Fifth and Fourteenth Amendments prohibits the police from merely listening to the voluntary, volunteered statements and using them against him or her at the trial. Moreover, if the defendant's statement is not only voluntary, but constitutes a knowing and intelligent waiver of his right to see counsel, the interrogation may resume. Such a knowing and intelligent waiver is a matter which depends in each case upon the particular facts and circumstances surrounding the case. Such facts and circumstances include the background, experience, and the conduct of the accused. The state must demonstrate the validity of the defendant's waiver by a preponderance of the evidence. (*People v. Bradford, supra*, 14 Cal.4th at pp. 1033-1034.)

The scope of review is well established. An appellate court must accept the trial court's resolution of disputed facts and inferences and its evaluations of credibility, if they are substantially supported. However, we must independently determine from the undisputed facts, and those properly found by the trial court, whether the challenged statement was illegally obtained. We apply federal standards in reviewing defendant's claim that the challenged statements were elicited from him or her in violation of *Miranda*. (*People v. Bradford, supra*, 14 Cal.4th at p. 1033.)

Application of the foregoing principles entails a detailed examination of the appellant's interviews with Detective Martin as well as hearings on motions he employed

to exclude the evidence of his confessions. At 5:11 p.m. on April 4, 1999, Detective Martin interviewed appellant in the old briefing room at the Sheriff's Department Porterville substation. Martin told appellant, ". . . I told you, well you came down here voluntarily or I asked you and you said it would be no problem to come down and give me a statement." At 5:32 p.m., Martin took a break in the taped interview and began recording again at 5:45 p.m. The following exchange occurred immediately after taping resumed:

"Kenneth Neal: Either charge me or let me go cause I didn't do a damn thing.

"Det. Martin: Well hold on alright. . . . Okay Kenny I've, you know, some of the things you've told me . . . just don't quite agree with information I've received plus looking at some of the stuff you have on. So let me read this inform, this to you. [Martin reads *Miranda* warnings and appellant indicates he understands them.] [¶]...[¶]

"Det. Martin: Okay . . . taking into consideration stuff that you've told me . . . you want to continue talking to me?

"Kenneth Neal: Huh?

"Det. Martin: Do you want to continue to talk to me about uh.

"Kenneth Neal: About what?

"Det. Martin: About what's happened . .

"Kenneth Neal: What happened . .

"Det. Martin: . . to uh, to Don.

"Kenneth Neal: What if I tell you no?

"Det. Martin: Alright.

"Kenneth Neal: I, I told you what I did.

"Det. Martin: Well yeah but we're not finished. I mean we got up to the part where . . . you and Rossie had shown up right. . . . I want to go

beyond that and find out if there's anymore information you could provide me.

“Kenneth Neal: Is that right?”

“Det. Martin: Now. Huh?”

“Kenneth Neal: I told you everything I know.

“Det. Martin: Well I have some more questions okay. Now I've read you these rights, now you can decide not to talk to me if you'd like, do you understand that?”

“Kenneth Neal: Yeah.

“Det. Martin: So my question is, do you want to..

“Kenneth Neal: If I say no then what's that mean?”

“Det. Martin: Well.. It means no. No means you don't want to talk to me.

“Kenneth Neal: And then does that mean I get to leave?”

“DET. MARTIN: No it, it means . . . that I'll wonder why you don't want to talk to me.

“Kenneth Neal: Cause I just want, I want to go home now.

“Det. Martin: Okay.

“Kenneth Neal: I told you what I know.

“Det. Martin: Well why all of a sudden you want to..

“Kenneth Neal: And I don't like talking on anything.

“Det. Martin: Well why all of a sudden you want to go home, you don't want to talk on the tape recorder? Before you wanted, it was fine, you were talking to me no problem. As soon as I started questioning..

“Kenneth Neal: Alright man let's just finish up then.”

Detective Martin then proceeded to question appellant extensively, to challenge appellant's alibi, and to accuse him of the murder of Don Collins. At one point in the

lengthy exchange, appellant said “I’m ready to talk to my lawyer, I ain’t gonna say nothing now.” Detective Martin immediately responded with questions about appellant’s handwriting exemplars and appellant replied to the questions. Later in the interview, the following exchange occurred:

“Kenneth Neal: Did you hear me, I want to talk to my lawyer or I want to go cause (unintel) damn thing (unintel).

“Det. Martin: Well [you’re] under arrest period okay, that’s what it comes down to right here.

“Kenneth Neal: I’m under arrest?

“Det. Martin: You’re under arrest.

“Kenneth Neal: For what? What’s the charges?

“Det. Martin: Murder.

“Kenneth Neal: Murder.

“Det. Martin: If you hadn’t figured that out, how many times do I have to tell you. You’re here now for the murder of . . . Don. [¶] . . . [¶]

“Kenneth Neal: . . . I want to talk to my lawyer. (unintel)

“Det. Martin: Cause you’re lying right?

“Kenneth Neal: No you’re lying.

“Det. Martin: So you weren’t with Sara till 2:30 yesterday were you?

“Kenneth Neal: Yeah I was.

“Det. Martin: Well how come earlier you said you went straight to Rossie’s and never left (unintel).

“Kenneth Neal: I’m ready to talk to my fuckin lawyer. (Unintel) shit here and pin a murder on me and I didn’t even fuckin do this shit, trying to get someone caught up.

“Det. Martin: Well only lies will catch you up.

“Kenneth Neal: Yeah I know and I ain’t lying. That’s why I said I wanted to talk to my lawyer. I’m through.

“Det. Martin: Do you have a lawyer?

“Kenneth Neal: No but I’ll get one.

“Det. Martin: Do you think you need a lawyer for this?

“Kenneth Neal: Do I what?

“Det. Martin: Do you think you need a lawyer for this?

“Kenneth Neal: Well fuck if you’re gonna charge me for murder I do. Shit.

“Det Martin: Well I mean are you guilty or not?”

Detective Martin then suggested that Collins might have offended appellant by his homosexual preferences and that the criminal justice system was “gonna hit you as hard as they can” unless appellant cooperated with Martin. Martin again explored appellant’s alibi and explanation for the scratches on his hands. Martin also told appellant “so far you haven’t said anything to convince me that you didn’t do it.” After an additional exchange, Martin terminated the taped interview at 6:17 p.m.

At 12:05 p.m. on April 5, Detective Martin conducted another taped interview with the appellant, this time pursuant to appellant’s request conveyed through Detective Tolson. Before questioning appellant in Tolson’s presence, Martin read the warnings from *Miranda* and obtained appellant’s knowing waivers. Martin expressly agreed to send appellant’s mother a letter, to inform the court that appellant had been cooperative, and to allow appellant to smoke during the interview. The detective noted these promises on the tape recording. Appellant then admitted killing Don Collins and explained:

“I don’t know, okay, like me and him just, a lot of time, we’d just be sittin’ there talkin’ and something like that and, and if I said something he didn’t agree with, he’d raise his voice to me and he did that shit a lot of time and then finally I just got fed up with it and I just killed him. But at first I, well the last thing I was doing, I was trying to just like intimidate

him or scare him but I guess it went a little too far and I didn't know what I did until I was done."

Appellant then explained in detail the events leading up to Collins's death and the circumstances of the killing. Appellant also explained his actions after the death of Collins, up to and including his April 4 visit to Collins's apartment with Lambert.

After appellant related the post-homicide sequence of events, the following exchange occurred:

"Det. Martin: You know I appreciate that you wanted to sit down and call me back down here, you know, again.

"Kenneth Neal: Well at least I didn't [waste] your time.

"Det. Martin: No . . . cause you know we had a lot of stuff to take care of . . . Uh I know last night we kind of went round and round...

"Kenneth Neal: Yeah.

"Det. Martin: . . . about it and . . . I know you wanted to tell me last night but you just couldn't probably come around to it right?

"Kenneth Neal: Yeah I, I couldn't quite confess then, but now I just ...

"Det. Martin: You had the . . .

"Kenneth Neal: . . . been thinking all night and even when I was in that room for most of the day . . .

"Det. Martin: Mmm mmm.

"Kenneth Neal: . . . still thinkin' about it.

"Det. Martin: And . . . you know I came to you, you called and I came and . . . I explained to you that you really didn't have to talk to me but it was at your request so here we are.

"Kenneth Neal: Yeah."

Detective Martin stopped the interview at 12:26 p.m., resumed at 12:28 p.m., and asked appellant a few more questions about his acquaintance with Collins. Martin terminated the interview again at 12:29 p.m.

On that same date, April 5, Detective Martin conducted another tape-recorded interview with appellant at 4:45 p.m. At the beginning of this interview, appellant signified that Martin had previously read his rights under *Miranda*. Appellant indicated he remembered and understood those rights, but nevertheless wanted to speak further with Detective Martin. During this interview, appellant provided further details about the sequence of events preceding and following the death of Don Collins. In addition, appellant explained Collins had provoked his conduct by sexually touching him on two occasions in the weeks preceding the homicide.

At the May 11, 1999 preliminary hearing, Detective Martin in response to voir dire questioning by defense counsel, said he initially took a statement from appellant as a witness. During the course of the interview, Martin noticed discrepancies in appellant's statement and "some evidence on him." At that point, Martin considered appellant a suspect and read appellant his *Miranda* rights. Martin explained, "At this point I was considering him a suspect but that still didn't mean that he was guilty so depending on what would be said if I found out some incriminating information, then that would, I would consider him a true suspect versus somebody that just had discrepancies in their statements." Upon resumed direct examination, Martin admitted questioning appellant after the latter requested a lawyer "possibly for impeachment purposes."

Upon further questioning by the prosecution, Martin said appellant contacted him twice after the first interview on April 4. The first contact occurred "a few minutes" after Martin concluded the first interview. The second contact occurred the following day when appellant talked to Detective Tolson and requested the opportunity to speak with Martin again. On this occasion, Martin readvised appellant of his *Miranda* rights and appellant said he would talk with Martin. At the conclusion of the People's resumed

direct examination of Martin, the prosecutor said, "I'm not going to offer the first statement. I will simply offer this final one as a statement that was made after the defendant initiated contact with the officer." Upon further voir dire by defense counsel, Martin admitted questioning appellant despite the latter's seven requests for counsel. At the conclusion of the voir dire, defense counsel stated: "I'd ask that the statement not be admitted. It was coerced and my client clearly didn't understand his rights and the officer made no attempt to see that my client understood."

Counsel conducted further direct examination and voir dire of Detective Martin. The court then framed the issue as follows:

"We've got an 18 or 19 year old young man who is taken into a room by an official of the government, a police official. Given a recitation of his rights and then over the next 15 minutes seven times he requests an attorney and is denied the right that he was just, that was just explained to him. And at the end of that time he is incarcerated and kept over night.

"My question is at what point in time does a repeated denial of rights which has apparently by design and training become coercive and I'm concerned about the effect of repeatedly giving someone their rights and yet denying those rights and when does that constitute coercion? . . ."

After lengthy arguments by counsel and exchanges with the court , the court ruled:

"All right. . . . I know that the . . . California Supreme Court in a recent decision expressed real concern about this training that officers are to continue questioning even after the assertion of rights. And it is a grave concern to me in this case but I'm swayed by the fact that this occurred, that the second set of questioning occurred the next day and apparently well obviously it was the defendant that initiated the contact.

"Had there been any further discussion after his assertion of rights in the first contact on the 4th it would obviously be grounds to suppress that but since he initiated it the second time and apparently was readvised of his

rights, I believe there's sufficient^[4] continuation of the coercive action to, to where I find that there's no evidence that the second statement was coerced. So I'm gonna allow the statement."

After the court ruled, the preliminary hearing continued and the People ultimately rested. The defense declined to present affirmative evidence and the prosecution moved that appellant be held to answer as charged. Due to other court business, the court deferred the arguments of counsel to the following day. On May 12, 1999, the preliminary hearing resumed and defense counsel renewed the motion to suppress appellant's incriminating statements. In the alternative, counsel urged the court to hold appellant to answer for voluntary manslaughter rather than murder. After hearing the arguments of counsel, the court ruled:

"As I said yesterday, I'm very concerned about the questioning activity of the officer in this case and I think it comes very close to coercion but I believe I ruled correctly yesterday that in view of the extensive period of time following the questioning and the defendant's invitation for further contact with the officer that that would attenuate any coercive behavior on the part of the officer.

"There is no question I have the authority to reduce this to a manslaughter finding, answer on a manslaughter charge is a separate crime from murder. It's not a degree issue. However, I agree with the People that a period of deliberation of at least a half an hour prior to the action and the thought process that [the prosecutor] has mentioned during the course of the strangulation is sufficient to show the crime of murder rather than a lesser form of homicide. Accordingly I find that there is sufficient cause to believe that the defendant committed the crime as set forth in the complaint."

On October 5, 1999, appellant filed a motion to set aside the information (§ 995) on the ground he was committed without reasonable or probable cause. Appellant specifically objected to the admissibility of any statements he made after invoking his

⁴ It would appear that the court intended to say "insufficient" and either misspoke or was misquoted in the transcription.

Fifth Amendment rights and argued his statements to police were involuntary and the product of coercive police conduct. On November 22, 1999, the People filed written opposition to the motion, claiming appellant's initiation of contact with Detective Martin made the subsequent confession admissible even assuming a *Miranda* violation. The court conducted a contested hearing on the motion on November 23, 1999, and took the matter under submission. On December 20, 1999, the court filed a minute order denying the motion to set aside the information. The court stated in relevant part:

“The crux of defendant's motion is whether the magistrate erred in admitting, over objection, defendant's confession to Detective Martin. The evidence is undisputed on the evening prior to the confession, defendant, after *Miranda* advisement, waived his *Miranda* rights and provided a statement.

“Partway through the oral interrogation, the defendant requested counsel. Despite the request, the detective continued the interview for the purpose of securing statements that might be used at trial, in rebuttal, for impeachment. Defendant continued to deny involvement. Detective Martin told the defendant it would be better if he told the truth. At some point, the interview was terminated and defendant was returned to custody. [¶] The next morning, defendant asked a jail deputy i[f] he could speak with Detective Martin. Martin arrived about noon and defendant confessed.

“This court shares the magistrate's concern ‘about the questioning activity of the officer in this case and . . . it comes very close to coercion.’ . . . However, the duty of this court at this time does not include an independent determination of whether the confession was coerced. The duty of this court is to determine whether there is sufficient evidence to support the magistrate's evidentiary determination there was no coercion and defendant's decision to contact Detective Martin was voluntary and a product of his independent free will. This court, having reviewed the evidence presented at the Preliminary Hearing, determines there was sufficient evidence presented . . . to support the magistrate's determination the confession was not coerced.

“Parenthetically, excluding defendant's confession from consideration, the evidence presented at the preliminary hearing was sufficient to withstand defendant's challenge. There was some showing of each element of the charged crime. The similarity in the handwriting on the

note and on defendant's handwritten statements and common misspellings in the note and handwritten statements provided sufficient circumstantial evidence for assuming the possibility that the defendant committed the offense charged. . . ."

On January 10, 2000, the prosecution filed a trial brief and proposed to introduce appellant's incriminating statements into evidence at trial. The prosecution maintained appellant's initiation of contact with Detective Martin on the second day of interrogation made his subsequent statements admissible despite the *Miranda* violation on the first day. The prosecution also argued that appellant's statements were voluntary and not the product of coercion by law enforcement. Defense counsel filed a trial brief and moved for suppression of the statements. Counsel maintained the failure of police to end the interrogation after appellant invoked his Fifth Amendment rights rendered any statements inadmissible. Counsel also argued that Martin's promises, coupled with his violation of appellant's rights, coerced appellant into involuntarily incriminating himself.

On January 10, 2000, the court conducted a contested hearing on the suppression motion. The court heard the testimony of Detective Martin and appellant and received the tape recordings and transcripts of appellant's statements.

Martin said he first saw appellant at the parking area northeast of Collins's apartment. Appellant identified himself as a witness who had located Collins's body. Martin interviewed another witness, Ross Lambert, in his vehicle while appellant wrote out a short statement about his knowledge of the crime. One half hour later, Martin finished speaking with Lambert, briefly talked to appellant, and then asked appellant to go to the Porterville substation for an interview. Appellant was cooperative and agreed to the interview. Martin drove appellant to the substation and had him write a second, more detailed statement. Martin said appellant was not in custody or under arrest at that point in time.

Appellant took 30 to 45 minutes to write out the second statement. After receiving the second statement, Martin interviewed appellant as a witness. Martin said appellant

was free to go at the inception of the interview. Martin did not read appellant his *Miranda* rights because the detective simply considered appellant a witness. During the interview, Martin noticed appellant was nervous and had some red marks around his hands. The marks were located from the web between the thumb and forefinger across to the base of the hand on the pinky side. The marks continued on the palm side of both hands. Martin asked appellant about the marks and appellant said they were the result of a fight with an unnamed individual.

At one point, Martin asked appellant about the note found at the scene and appellant denied any knowledge of the note. When Martin questioned appellant about the similarities in the notes, appellant started to get angry and defensive. At that time, Martin began treating appellant as a suspect instead of a witness. Martin said he took a break in the interview, resumed, and read appellant his *Miranda* rights. Appellant denied killing Collins and during the course of the interview requested counsel “[m]aybe half a dozen times.” Martin said he continued to question appellant “[f]or possible further impeachment at trial and if he decided to testify ‘cause there were several inconsistencies with his statements.” According to Martin, Tulare County Sheriff Lieutenant Lomeli had informed him that such questioning “can be a useful tool.”

Martin denied threatening appellant but did advise him the interview was an opportunity to “come clean” if he, in fact, had murdered Collins. Appellant continued to deny any involvement and the interview concluded at 6:17 p.m. A few minutes after appellant was placed in the booking cell at the substation, he asked to speak again with Martin. Martin met with appellant and the latter said he would show Martin where he got into a fight with the unnamed other person. However, appellant did not admit to any knowledge of the homicide. Martin did not believe what appellant was saying and returned him to the booking cell. Martin subsequently arranged for appellant to provide a handwriting exemplar, fingerprints, hair samples, and photographs of his hands and to submit to crime laboratory personnel. After the personnel gathered the items, appellant

stood in the booking area, looked at Martin and said, ““You’re not a rat if you tell on yourself.”” He also said, ““A lot of people confess, don’t they?””

The following day, Detective Tolson contacted Martin at about 10:25 a.m. and said appellant wished to speak with him. Martin went back to Porterville, first spoke with Tolson, and then readvised appellant of his *Miranda* rights “told him he didn’t have to talk to me and made it real clear that I was there at his request.” Appellant confirmed his rights and said he was willing to give a truthful statement. Prior to that statement, Martin agreed to send appellant’s mother a letter or to contact her by telephone. Martin said he made no further promises. Appellant subsequently confessed to the crime. On cross-examination, defense counsel questioned Martin at great length about the chronology of events leading to appellant’s confession. On recross-examination, Martin said appellant was reluctant to provide handwriting exemplars.

Appellant also testified at the pretrial hearing on the motion to suppress. Appellant said he provided Martin with the written statements because he felt he had to do so. Appellant said he asked to leave the Porterville substation several times but Martin gave excuses to put his departure off. During the first interview, appellant asked for an attorney “at least 7 times” but Martin “[t]old me no.” Although Martin never made threats, he did say it “would get worse” for appellant if he declined to talk to Martin. Martin also said appellant would get help in court if appellant talked to him. Appellant said he was placed in a cell with no sink or toilet. The next morning Detective Tolson gave him some water and allowed him to use one of the bathrooms in the substation. However, appellant had not had anything to eat since noon the day before.

Before Martin spoke with him that morning, other officers took appellant’s fingerprints and took photographs of his person. They also took his clothes and issued him a jumpsuit. When Martin contacted appellant, he agreed to help appellant write a letter to his mother. He also allowed appellant to smoke a cigarette. According to appellant, Martin also said “he would try to make everything look all right in court for

me, help me out ‘cause I was helping him out.” On cross-examination, appellant again offered a detailed chronology of the events leading to his confession. Appellant said he was feeling guilty when he asked for Martin to come and talk with him.

After extensive arguments by counsel the court found the confessions admissible, ruling:

“I find that Mr. Neal was not in custody until that point in the first interview when he was Mirandized. Certainly, any statements made prior thereto, either orally or in writing, are admissible. I find such statements were voluntary and not the product of any coercive activity conduct on the part of the officer.

“While, certainly, there are circumstances that strongly suggest to the court that Mr. Neal was a focus of suspicion by Detective Martin . . . the issue, of course, is whether or not he was in custody, and I find that he was not.

“Certainly during the first interview Mr. Neal invoked his right to counsel. That’s without dispute . . . Any statements made by Mr. Neal thereafter are not admissible in the District Attorney’s case in chief.

“[I]nsofar as potential impeachment is concerned, as to any statements made by Mr. Neal during that statement on that date thereafter, I find that they are not the product of coercion and, therefore . . . would be admissible only for purposes of impeachment. [¶] . . . [¶] As to the first statement following Mr. Neal’s . . . invocation of his right to counsel.

“Now, I have, quite frankly, struggled with the issue, obviously, relating to the admissibility of the second statement. . . . I do find that the District Attorney has met its burden relating to that, and let me specifically state my findings as to that.

“... I do find that ... Mr. Neal’s . . . confessions of April the 5th made following detective’s readvisement to Mr. Neal of his Miranda rights and Mr. Neal’s waiver thereof were . . . not the tainted product of Detective Martin’s ... blatant disregard . . . of Mr. Neal’s April 4th invocation of his right to counsel.

“I make this finding under the standard articulated in People versus Simms . . . a 1993 decision, 5 Cal.4th 405. [¶] I further specifically find that Mr. Neal’s request to talk to Detective Martin was an independent

intervening voluntary act such as to satisfy or meet the Simms standard. [¶] I further find -- and I make these findings by a preponderance of the evidence. . . . The standard is preponderance of the evidence, totality of the circumstances.

“I find by a preponderance of the evidence that Mr. Neal’s subsequent confession was sufficiently attenuated from Detective Martin’s conduct the previous day so as to be free of the taint of impropriety. [¶]...[¶]

“I do note that Detective Martin had terminated . . . the conversation the previous evening. . . . Mr. Neal did not terminate the conversation. [¶] I’m very satisfied that Mr. Neal did unilaterally initiate the contact on April the 5th specifically requesting to talk to law enforcement.

“I considered the influence of all of the statements -- all of the colloquy, really, between Detective Martin and Mr. Neal following Mr. Neal’s invocation of his right to counsel the prior date, and under the case law that has been cited to me and, again, the totality of the circumstances, I find that the People have met their burden.

“I’ve also considered the fact that Mr. Neal was fully readvised of his Miranda rights before any admission was given on April the 5th and that he waived each one of these rights.

“I have also considered, of course, Mr. Neal’s testimony and the inferences that counsel has argued, Ms. Wolfe has argued relating to sleep deprivation, food deprivation, water deprivation and deprivation of bathroom privileges.

“We have essentially Mr. Neal’s testimony relating to that. We also have, of course, the testimony of Detective Martin as to Mr. Neal’s appearance and demeanor the following morning, and I wanted to make mention of that because . . . I have considered that evidence in making the finding that I did make, have made.

“So the confessions are admissible in the prosecutor’s case in chief for the reasons that I have stated. [¶] I . . . further find that not only were the confessions voluntary, but they were not the product of any coercion. [¶] Insofar as the objections relating to the admissibility of the exemplar, itself, I find that it is admissible.”

Once a custodial suspect invokes his right to an attorney, he is not subject to further interrogation by the authorities until counsel has been made available to him,

unless the accused himself initiates further communication, exchanges, or conversations with the police. Interrogation refers not only to express questioning but also to any words or actions on the part of the police that the police should know are reasonably likely to elicit an incriminating response from the suspect. In deciding whether particular police conduct is interrogation, we must remember the purpose behind *Miranda* is to prevent government officials from using the coercive nature of confinement to extract confessions that would not be given in an unrestrained environment. Clearly, not all conversation between an officer and a suspect constitutes interrogation. The police may speak to a suspect in custody as long as the speech would not reasonably be construed as calling for an incriminating response. (*People v. Clark* (1993) 5 Cal.4th 950.)

A statement is involuntary and, thus, inadmissible if it is obtained by threats or promises of leniency, whether express or implied. A finding of coercive police activity is a prerequisite for a finding that a confession was involuntary under the due process clauses of the federal or state Constitution. (*People v. Clark, supra*, 5 Cal.4th at p. 988.) The requirements of *Miranda* are designed to assure protection of the federal Constitution's Fifth Amendment privilege against self-incrimination under inherently coercive circumstances. A suspect may not be subjected to custodial interrogation unless he or she knowingly and intelligently has waived the right to remain silent, to the presence of an attorney, and to appointed counsel in the event the suspect is indigent. (*People v. Sims* (1993) 5 Cal.4th 405, 440.)

A reviewing court must examine the uncontradicted facts surrounding the making of the statements to determine independently whether the prosecution met its burden and proved the statements were voluntarily given without previous inducement, intimidation, or threat. With respect to the conflicting testimony, the court must accept that version of events which is most favorable to the People, to the extent it is supported by the record. The prosecution bears the burden of proof and must establish voluntariness by a preponderance of the evidence. In cases of psychological coercion, the question is

whether the influences brought to bear upon the accused were such as to overbear appellant's will to resist and bring about confessions not freely self-determined. An examination must be made of all the surrounding circumstances--both the characteristics of the accused and the details of the interrogation. (*People v. Thompson* (1990) 50 Cal.3d 134, 166; *People v. Markham* (1989) 49 Cal.3d 63, 65.)

We have reviewed the surrounding circumstances of the instant confessions at substantial length and in great detail. On the first day of the preliminary hearing, the prosecutor conceded Detective Martin's *Miranda* violation during his first interview with appellant at the Porterville substation. The prosecutor further indicated she did not intend to offer at trial the appellant's statements from the first interview. Instead, she argued his subsequent confessions were freely given. The prosecutor's position is amply supported by the record on appeal. Appellant initiated the second interview at which he confessed to the charged homicide. This interview occurred many hours after Detective Martin committed the *Miranda* violation. The only "inducements" prior to the confession were several cigarettes, a letter or telephone call to appellant's mother, and Martin's promise to inform the court that appellant had confessed. Under the totality of the circumstances, we cannot say influences were brought to bear upon appellant such as to overbear his will to resist and bring about the confession.⁵ (*People v. Thompson, supra*, 50 Cal.3d at p. 166.)

Even were we to assume the erroneous admission of the confession, we note the direct and circumstantial evidence of appellant's guilt was strong. Law enforcement officers knew the appellant had a longstanding relationship with Don Collins and had

⁵ Appellant does claim on appeal he was "deprived of food, water, and a toilet for a substantial period of time prior to his confession." However, as the People responded: "Nowhere in his testimony at this point does he indicate he asked for food, water, or to use the bathroom, and was denied those things. Nor does he say he was forced to sleep on the floor."

been residing with him at the Sequoia Dawn complex. Officers also knew appellant was driving Collins's automobile on the evening of the murder. Appellant's handwriting exemplar matched the "Adkins" note left at the scene of the offense and included some of the same misspelled words. Appellant had marks and abrasions on his hands consistent with his use of a ligature which was being tightened around another human being's neck. Given this significant evidence, any error in the admission of the confession was harmless beyond a reasonable doubt. (*People v. Flood* (1998) 18 Cal.4th 470, 503-507.)

DISPOSITION

The judgment is affirmed.

Harris, J.

WE CONCUR:

Dibiaso, Acting P.J.

Vartabedian, J.