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SUPERIOR COURT OF CALIFORNIA

COUNTY OF MONTEREY

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. PAUL RUBEN FLORES & RUBEN RICARDO FLORES, Defendants.	MONTEREY CASE NO. 22CR003712 & 22CR003713 SAN LUIS OBISPO CASE NO.: 21F-02402-A, B PEOPLE'S MEMORANDUM TO THE COURT REGARDING THE DEFENDANTS' STATEMENTS THE PEOPLE WILL INTRODUCE AT TRIAL Date: June 6, 2022 Time: 8:30 Dept. 4

STATEMENT OF THE CASE

On August 2, 2021, the Preliminary Hearing in this case began in front of the Honorable Judge Craig Van Rooyen in Department 5. The hearing concluded on September 22, 2021, when Judge Van Rooyen held the defendants to answer on the complaint. On October 4, 2021, the People filed an Information alleging one count of Murder in violation of PC 187 as to defendant Paul Flores and one count of Accessory after the Fact in violation of PC 32 as to defendant Ruben Flores. On January 21, 2022, the Honorable Jacquelyn Duffy denied defense motion under Penal Code section 995 and ruled that the portion of Paul Flores' statement to Investigators Hobson and Hanley was properly admitted. The People

intend to introduce the exact same portion of the June 19, 1996 interview as was admitted at Preliminary Hearing. The People have attached the full audio of this interview as Exhibit A to this motion. The People have attached a full transcript, as well as the redacted transcript so this court can see what was omitted. Should defendant Paul Flores testify at jury trial the People would seek to impeach him with the remainder of this statement.

STATEMENTS OF THE DEFENDANTS

Kendra Koed testified that she was a Cuesta student in May 1996 and attended the party at 135 Crandall Street the Friday before Memorial Day weekend. She stated she was at the party and was asking other people for gum and Paul Flores said he did in fact have some gum. The defendant directed her outside than grabbed her and started kissing her again after she refused his advances

In May 1996, Cheryl Manzer/Andersonn was a freshman at Cal Poly and attended the party at Crandall Street. She and Tim Davis helped Kristin Smart to her feet after the party. The defendant, Paul Flores, approached them quickly after they started walking back and said something to the effect of "I will walk back also." At this point Kristin Smart was not walking on her own. Defendant Paul Flores took control of Ms. Smart and put his arm around Ms. Smart's waist. About a third of the way back to the dorms, Paul Flores tells Ms. Anderson that she can go ahead. They stopped at least twice on the way back and each time Paul Flores told Ms. Anderson that she could go ahead and leave him with Ms. Smart. Ms. Anderson thought it was concerning that Paul Flores tried to tell her to go ahead a second time. At the corner or Grand and Perimeter, Paul Flores asked for a kiss, which she refused. He then asked her for a hug which was again refused Ms. Anderson asked Paul Flores if he would get Kristin back to her dorm room and Paul Flores replied "yes." The last time she saw Kristin Smart, Paul Flores has his arm around Kristin Smart and Ms. Smart was intoxicated.

Javier Carrillo was friends with defendant Paul Flores and they hung out a couple times a week. Mr. Carillo stated that Paul Flores told him that the missing person had been flirting with Flores at the party and that he may have met the missing person before the party or may

have known her in some other way. Flores told Carillo that a group of students walked back and then split up. Carrillo confronted Flores about why he didn't walk her back to the hall and he replied quote, "I don't know." Carillo observed an injury to Paul Flores' right on Tuesday May 28, 1996. Flores told Carillo that he received the injury playing basketball.

Detective Mike Kennedy spoke with defendant Paul Flores on Tuesday May 28, 1996 in his dorm room, Santa Lucia #128. During this encounter Paul Flores was not under arrest, was not handcuffed, was not in custody, and was in his own room. Kennedy observed how Paul Flores was nervous, his heart was pounding in his chest to such a degree that his shirt was moving. Paul Flores told him that he walked Kristin Smart up the hill and then they had separated. He went back to his dorm. He gave her two hugs while in transit from the party. Kennedy had asked him if he was willing to speak with him and Flores agreed. At the conclusion of the interview, Kennedy asked Paul Flores if he was willing to speak again and Flores said he had no problem speaking with Investigator Kennedy again.

Kennedy again spoke with defendant Paul Flores on May 30, 1996. Flores was not under arrest, came to Kennedy's office voluntarily, left after the interview, and said he would be happy to speak with police again.

Jeromy Moon was a senior at Arroyo Grande High School and was friends with Paul Flores. They hung out on Memorial Day weekend May 1996. On that Sunday evening, he noticed that Paul Flores had a black eye. Paul Flores claimed that he woke up with it. On Monday, they played basketball together with two other individuals.) During that game, Paul Flores did not get hit in the face. When asked by defense counsel for Ruben Flores whether he believed Paul's story, he said that it doesn't seem like a likely story so, yes, I do have reasons not to believe you just wake up with a black eye.

Angie Doe was in a dating relationship with defendant Paul Flores around 2003-2004. About six months into their relationship, defendant Paul Flores took Doe to defendant Ruben Flores' house in Arroyo Grande. On one occasion, she walked towards the back of the house where there are Avocado trees. Both defendants, Ruben and Paul Flores, were present in

the backyard. Doe stepped into the backyard and walked towards the Avocado trees. She arrived within a couple of feet away when both defendants re-directed her away from the area by asking her to leave that area. Paul Flores asked her to come around the house and leave the area of the Avocado trees. Ruben Flores had the same reaction and walked her towards the front of the house, the opposite end of the property away from the Avocado trees.

In May 24, 1996, Tim Davis was a junior at Cal Poly San Luis Obispo and attended a party at 135 Crandall way. Davis identified defendant Paul Flores as having been present at the party. Davis saw the defendant engaging as much as he could be with as many girls as he could.

At the end of the party, Davis saw Kristin on the lawn and didn't realize she was out there. She needed his help to get up off the ground so he lifted her up and engaged her so that she could stand. Davis described it as almost like an elderly person, helping them to a car. He remembered She put her arms around him and said, "I'm so cold." Davis turned around, and Paul Flores came out, uninvited, from "wherever he was" to join them. Paul Flores was just standing there and like, "Hey I'll just go with you guys." Davis further described Paul's behavior as, "He just kind of the darkness and joins us." From Paul Flores' location you could see directly to where Kristin Smart had been laying face down in the grass. From the time he helped her up he was supporting Kristin and she could not walk on her own. Around the Health Center, Cheryl Anderson told Davis that she could "take these guys back." Paul said, "I'll take Kristin, give her to me. I'll take her the rest of the way." Davis left and went home at that point.

In May of 1996 Robert Cudworth was a patrol officer with the Cal Pol Police Department. He interviewed Paul Flores on May 28, 1996, and Flores claimed he knew of Kristin Smart but didn't talk to her that night. Flores never told Cudworth he asked Cheryl Anderson for a hug and kiss, told Cudworth he was not interested in Kristin Smart.

Chief DA Investigator Bill Hanley interviewed defendant Paul Flores on May 31, 1996. Hanley called the campus store and asked Paul Flores if he would be willing to come to the

Cal Poly Police Department for an interview and he replied no problem and he would be there. Fifteen minutes later, the defendant arrived at the station, but it was very busy that day. Hanley suggested, and Paul Flores agreed, that they would go into Hanley's vehicle to talk. Hanley thanked him for coming down and told him he was a witness in this case. Flores responded that he had no problem with that. Flores was not cuffed or detained in anyway and told Hanley he was willing to help in any way that he could. They went into an unmarked car. Flores was not cuffed and was not locked in the car. Flores claimed that he knew Smart as Roxy and that she had come up to him and introduced herself but that was the extent of their conversation. Flores claimed that he did not find Roxy attractive and, "didn't like those type of girls." Flores also claimed that he did not contact, touch, or talk to her during the party. Later in the conversation, Flores again claimed he was not attracted to Roxy at all. Flores claimed that when they arrived at Perimeter and Grand, he said goodbye to Cheryl Anderson and that was the extent of his interaction with Cheryl Anderson. Paul Floes never told Hanley that he asked Anderson for a hug or a kiss or that she denied him. Flores then tells Hanley, that Kristin Smart walked off on her own towards her dorm up perimeter from the intersection with Grand. When asked why, if Smart was so intoxicated, he did not walk her to her dorm Flores replied that he did not think of it.

Flores stated his father, defendant Ruben Flores, picked him up from Cal Poly the Sunday of Memorial Day weekend and they drove to his father's house in Arroyo Grande. On May 31, Investigator Hanley saw a discoloration under the right eye of Paul Flores that was consistent with the later stages of a black eye. On this occasion, Flores claimed he got the black eye from playing basketball on Monday with Jeromy MoonHanley asked why Flores would take a shower if he had a bad taste in his mouth and Flores didn't have an answer. At the conclusion of this interview, Hanley thanked Flores, said they would have follow-up questions, and then dropped Flores off on campus. Flores said, "no problem." During this entire interview, defendant Paul Flores was never cuffed, arrested, or detained in any way.

Hanley again spoke with Paul Flores on June 19, 1996. Hanley and his partner, Investigator Hobson, went to 710 White Court. This summation is taken directly from the People's 995 response to give the court the required specificity for this statement. Paul Flores answered the door when they knocked. (RT: page 3042, lines 1-4) They said they had some follow up questions and asked if he wouldn't mind coming with them to the Arroyo Grande Police Department. Flores responded that he would go with them and joined them in their car. (RT: page 3042, lines 3-8) In the car ride, Paul again expressed that it was fine for them to ask some more questions. (RT: page 3042, lines 25-26) Paul Flores refuses a polygraph that he had previously agreed to, so the two investigators ask Paul into the interview room and thank him for speaking with them. (RT: page 3043, lines 23-28) The officer never threatened him to do the Polygraph and Flores again indicated he would answer their questions. (RT: page 3044, lines 1-17) The door to the interview room was unlocked, the detectives were not blocking the exit and in fact Flores' back was to the door. Flores was never cuffed, detained, or arrested. (RT: page 3045, lines 1-12) The first few minutes of the interview was not recorded, but the Investigators again thanked him and confirmed he was willing to speak with them. (RT: page 3046, lines 6-16)

The People offered a portion of this interview into evidence that ends on Page 44, Line 20 of the transcript submitted to the court as 33A. (RT: page 3048) In his ruling on defense's Miranda objection to that portion of the interview, Judge Van Rooyen said, "In the court's view, based on the totality of the circumstances, a reasonable person in his position would not feel like he was under arrest, and so I don't find that there was a Miranda violation by not advising him of his Miranda Rights. Again, this is just a ruling on the first 48 minutes of the interview, and I'm not making a ruling on the rest of the interview." (RT: page 3054, lines 13-25)

The video and transcript of the video were stipulated into evidence and Judge Van Rooyen viewed the video. (RT: page 3054, lines 27-28) Amongst other statements, the defendant claims that he did not receive the black eye while playing basketball, but actually hit

the steering wheel of his truck. (Exhibit #33A, page 30-31, lines 10-2) The defendant admits he lied originally about getting it playing basketball and says, "Oh it's not really lies. A Fib. So minute, it's not well, I guess you can call it a little white lie." (Exhibit #33A, page 42, lines 17-18)

On cross-examination by Mr. Mesick, Hanley was asked about Paul Flores' claim that he took a shower and why Hanley was concerned with the defendant's answer. Hanley answered, "I guess where I was going with that is if there's some physical evidence on him that would have him take a shower, whether it be blood, anything. That's how come - - it was not that he took a shower." (RT: page 3083, lines 20-28)

The People intend to introduce the exact same portion of the June 19, 1996 into evidence at jury trial. If defendant Paul Flores chooses to testify then the People intend to impeach him with the remainder of this interview.

In the summer of 1996, Stan Smart drove by Ruben Flores' house and Ruben Flores told him, "You need to get out of here... someone could get shot.

Jennifer Hudson was around 17 or 18 years old in August of 1996. One time, she was skateboarding in San Luis Obispo and the defendant was present. A Public Service Announcement was read asking if anyone had information about Kristin Smart or her disappearance. Flores responded to the PSA by saying that bitch was a dick tease and that he was done playing with her. He buried/put her underneath his ramp in Huasna. Hudson was so concerned by the statement that she left in the middle of the social gathering.

Dorm Phone records for Paul Flores and Derrick Tse's room show that Paul Flores made a call to Ruben Flores at 9:47am to his Arroyo Grande home from the dorm room. There were no calls on Saturday and no other calls from the phone on Sunday, May 26.

On May 19, 2021, Cole responded to the home of Ruben Flores at 710 White Court with a Search Warrant for a Buccal swab on defendant Ruben Flores. Cole approached Ruben Flores who pointed to the names of Susan Flores and Mike McConville on the warrant

and asked why I would be taking their DNA. He said, "They did not commit a felony, only I did."

On Cross-Examination at Preliminary Hearing, counsel for Ruben Flores asked detective Cole if Cole thought Ruben Flores just mis-interpreted Cole's question. Cole said, No, I do not. I even explained – he asked me why he was needing to give another one. And I explained why to him. And when he made this statement, there was no direct question from me at all. He just asked me why I was getting the other two subjects because he is the one that committed a felony. (RT: pages 4589-4590, lines 19-3)

David Stone was a tenant at 710 White Court. He stated that Ruben Flores would often refer to Kristin Smart as that dirty slut.

ARGUMENT

I.

THE DEFENDANT WAS NOT IN CUSTODY FOR ANY OF HIS INTERVIEWS INCLUDING THE PORTION OF THE JUNE 19, 1996 INTERVIEW THAT WAS INTRODUCED AT PRELIMINARY HEARING

"It is settled that *Miranda* advisements are required only when a person is subjected to 'custodial interrogation.' [Citations.]" (*People v. Davidson* (2013) 221 Cal.App.4th 966, 970.) "[S]tatements made in a noncustodial setting are admissible against the speaker" even when they are not preceded by *Miranda* warnings. (*People v. Battaglia* (1984) 156 Cal.App.3d 1058, 1065.)

Custodial interrogation has long been defined as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." (*Miranda v. Arizona* (1966) 384 U.S. 436, 444; *People v. Salinas* (1982) 131 Cal.App.3d 925, 935.)

In *Oregon v. Mathiason* (1977) 429 U.S. 492 the United States Supreme Court held:

> [P]olice officers are not required to administer *Miranda* warnings to everyone whom they question. Nor is the requirement of warnings to be imposed simply because the questioning takes place in the station house, or because the questioned person is one whom the police suspect.

> *Miranda* warnings are required only where there has been such a restriction on a person's freedom as to render him "in custody." It was that sort of coercive environment to which *Miranda* by its terms was made applicable, and to which it is limited.

(*Id.* at p. 495.)

When determining whether a suspect is in "custody" for purposes of *Miranda*, the court must take into account all of the circumstances surrounding the questioning. "[T]he ultimate inquiry is simply whether there [was] a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest." (*California v. Beheler* (1983) 463 U.S. 1121, 1125; see also *Stansbury v. California* (1994) 511 U.S. 318, 322; *People v. Stansbury* (1995) 9 Cal.4th 824, 830.)

The test is entirely objective. (*People v. Davidson*, *supra*, 221 Cal.App.4th at p. 971.) Whether a person is in custody depends on the objective circumstances of the interrogation rather than on the subjective view of either party. (*Stansbury v. California*, *supra*, 511 U.S. at p. 323.) Where no formal arrest takes place, "the only relevant inquiry is how a reasonable man in the suspect's position would have understood his situation." (*Berkemer v. McCarty* (1984) 468 U.S. 420, 442, fn. omitted.)

If the suspect is juvenile, their age "properly informs the *Miranda* custody analysis." (*J.D.B. v. North Carolina* (2011) 546 U.S. ___, ___ [131 S.Ct. 2394, 2399, 180 L.Ed.2d 310, 319].)

> In some circumstances, a child's age "would have affected how a reasonable person" in the suspect's position "would perceive his or her freedom to leave." [Citation.] That is, a reasonable child subjected to police questioning will sometimes feel pressured to submit when a reasonable adult would feel free to go. We think it clear that courts can account for that reality without doing any damage to the objective nature of the custody analysis.

(*Id.* 564 U.S. at p. ___ [131 S.Ct. at pp. 2402-2402, 180 L.Ed.2d at p. 323].)

> [W]e hold that so long as the child's age was known to the officer at the time of police questioning, or would have been objectively apparent to a reasonable officer, its inclusion in the custody analysis is consistent with the objective nature of that test. This is not to say that a child's age will be a determinative, or even a significant, factor in every case. ... It is, however, a reality that courts cannot simply ignore.

(*Id.* 564 U.S. at p. ___ [131 S.Ct. at p. 2406, 180 L.Ed.2d at pp. 326-327].)

Whether the person is in *Miranda* custody is only judged by the circumstances at the time of questioning. (*People v. Thomas* (2011) 51 Cal.4th 449, 477-478 ["Even were we to conclude that defendant had been in custody when he was detained in the patrol car, it does not necessarily follow that he remained in custody when he was released from the vehicle before he was interviewed."].)

The *Miranda* custody test was well described in *Thompson v. Keohane* (1995) 516 U.S. 99:

> Two discrete inquires are essential to the determination: first, what were the circumstances surrounding the interrogation; and, second given those circumstances, would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave. Once the scene is set and the players' lines and action are reconstructed, the court must apply an objective test to resolve the ultimate inquiry: was there a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest. [Citations.] The first inquiry all agree, is distinctly factual. ... The second inquiry, however, calls for the application of the controlling legal standard to the historical facts.

(*Id.* at p. 112, internal quotation marks omitted.)

The United States Supreme Court has never offered lower courts a definitive list of objective factors relevant to determining custody. But the courts tend to rely on a number of objective factors, including: (1) whether the suspect has been formally arrested or the objective indicia of arrest are present; (2) absent formal arrest, the length of the detention or contact; (3) the site or location of the interrogation; (4) the ratio of officers to suspects; (5) the demeanor of the questioning officers; (6) the length, nature, and form of questioning; and (7) whether the investigation has focused on the suspect (as would have been perceived by a reasonable person). The totality of circumstances controls—no one factor is dispositive. (See *People v. Forster* (1994) 29 Cal.App.4th 1746, 1753-1754; see also *Yarborough v. Alvarado* (2004) 541 U.S. 652.)

Lengthy and detailed questioning, even over several hours, would not lead a reasonable person to believe his or her freedom of movement had been impaired where the

tone is generally nonaccusatory. But even pointed questioning about a suspect's involvement does not convert the questioning into a custodial interrogation. (*People v. Vasquez* (1993) 14 Cal.App.4th 1158, 1164; *People v. Spears* (1991) 228 Cal.App.3d 1, 21-26.) Nor does the fact that questioning occurs at the police station at the officer's request show one is in custody. (*California v. Beheler, supra,* 463 U.S. 1121; *People v. Kopatz* (2015) 61 Cal.4th 62, 79-82; *People v. Stansbury, supra,* 9 Cal.4th 824.) In fact, several leading cases hold the interrogation was non-custodial despite the presence of all of these factors. (*People v. Stansbury, supra*; *Oregon v. Mathiason, supra,* 429 U.S. 492; see also *People v. Moore* (2011) 51 Cal.4th 386, 394-404; *People v. Spears, supra*; but see, *People v. Aguilera* (1996) 51 Cal.App.4th 1163 [accusatory questioning after telling suspect they would take him home if he told the truth held custodial].)

The phrase "focus of the investigation" as a factor to be considered in determining whether a suspect must be informed of his *Miranda* rights, has led to much confusion. (*People v. Bellomo* (1992) 10 Cal.App.4th 195, 199-200.) An officer's uncommunicated intent to arrest a suspect, even coupled with the existence of probable cause, has no bearing upon whether a suspect is "in custody." (*Ibid.*; *People v. Vasquez* (1993) 14 Cal.App.4th 1158, 1163-1164; see also, *Berkemer v. McCarty* (1984) 468 U.S. 420, 442.) " ' "It was the compulsive aspect of custodial interrogation, and not the strength or content of the government's suspicions at the time the questioning was conducted, which led the Court to impose the *Miranda* requirements with regard to custodial questioning." ' " (*Berkemer v. McCarty, supra*, at p. 442, fn. 35; similarly, see *People v. Bellomo, supra.*) Thus, "*Miranda* warnings are not required simply because a person has become a suspect in the officer's mind." (*People v. Linton* (2013) 56 Cal.4th 1146, 1167.)

The United States Supreme Court has made it clear that "focus of suspicion" is only a single circumstance amongst many, and is an objective factor independent of the subjective views of either the officer or the person being interviewed. A line of cases from *Beckwith v. United States* (1976) 426 U.S. 341, 345, through *Minnesota v. Murphy* (1984) 465 U.S. 420,

430, to *Stansbury v. California* (1994) 511 U.S. 318, firmly establish "that an officer's subjective and undisclosed view concerning whether the person being interrogated is a suspect is irrelevant to the assessment whether the person is in custody." (*Id.* at p. 319.) The officer's subjective belief is important only to the extent it is communicated or otherwise manifested to the person being questioned. Even then, such belief is relevant "only to the extent [it] would affect how a reasonable person in the position of the individual being questioned would gauge the breadth of his or her ' "freedom of action." ' [Citation.]" (*Id.* at p. 325.)

During each of his three interviews with law enforcement, he always states he is happy to speak with officers and at the conclusion of the first two makes sure to tell them he is happy to speak with them again. He is never handcuffed, nor is he ever detained. In the portion of the June 19, 1996 interview that the People did NOT introduce at Preliminary Hearing, the defendant asked detectives if he was free to leave. Again, the People will not introduce any statements that occurred after this portion of the June 19, 1996, interview. Given the circumstances, any reasonable person in the position of the individual being questioned would have understood they were free to leave during the questioning that was admitted at Preliminary Hearing.

II.

THE STATEMENTS DO NOT TRIGGER ARANDA BRUTON

A. The statement made by Ruben Flores to Detective Cole and Investigator Camp on May19, 2021 bears such indicia of trustworthiness as to not violate the Aranda Bruton line of cases

First, the admissibility and usage of one defendant's statements against another defendant necessarily depends on rulings yet to be made by the trial judge. And any pretrial ruling on the admissibility of an admission or confession is not binding on the trial court or either party. (See, generally, People v. Riva (2003) 112 Cal.App.4th 981, 992; People v. Superior Court (Zolnay) (1975) 15 Cal.3d 729, 734; Saidi-Tabatabai v. Superior Court (1967)

253 Cal.App.2d 257, 266-267.) Statements made by one defendant are often admissible against a codefendant in a joint trial, notwithstanding Aranda.

The Aranda rule thus presumes the statement is an admissible admission by the declarant and inadmissible hearsay against the codefendant. On the other hand, if the statement is admissible against the codefendant under a hearsay exception, and its admission otherwise survives confrontation analysis, then the jury may consider it against the codefendant; no reason exists for severance or redaction. (People v. Smith (2005) 135 Cal.App.4th 914, 922.) Statements made in furtherance of a conspiracy, adoptive admissions, and declarations against penal interest are often sufficiently trustworthy to support their admission against the non-declarant in a joint trial. (See, e.g., People v. Greenberger (1997) 58 Cal.App.4th 298, 326-334; Evid. Code, §§ 1221, 1223, 1230.) The principles announced in Aranda have no application to such statements. (People v. Olivencia (1988) 204 Cal.App.3d 1391, 1402; People v. Morales (1968) 263 Cal.App.2d 368, 374-376; People v. Gant (1967) 252 Cal.App.2d 101, 111.)

In this case, the statement of Ruben Flores to Detective Cole and Investigator Camp qualifies as a Spontaneous Statement. Evidence Code section 1240 states that a statement is not inadmissible hearsay if it purports to narrate, describe, or explain an act, condition or event perceived and made spontaneously while the declarant was under the stress of excitement caused by such perception. The statement of Ruben Flores explains an event perceived by him and made spontaneously while he was under the excitement of such perception. Mr. Flores perceive the execution of the search warrant via buccal swab. His statement was an immediate response while under the stress and excitement of being swabbed by Detectives. The very fact that he caught himself and revised his statement to the fact that he was charged with a committing a felony only cements the status of his statement as spontaneous. Once he had time to reflect and realize exactly what he said, the statement was amended. The initial statement thus qualifies as a spontaneous statement and reliable hearsay and should thus be admitted in a joint trial.

B. Should the co-defendant testify then Aranda Bruton does not apply

No constitutional (*Aranda-Bruton*) or other prohibition applies to the use of one defendant's statement in full for impeachment should he take the stand in his or her own defense even though the statement incriminates a codefendant in a joint trial. In that situation, the testifying defendant's availability for cross-examination by the other defendants satisfies their rights under the Sixth and Fourteenth Amendments. (*Nelson v. O'Neill* (1971) 402 U.S. 622, 629-630; *In re Rosoto* (1974) 10 Cal.3d 939, 951-952.)

This issue was authoritatively addressed in *People v. Boyd* (1990) 222 Cal.App.3d 541. When each of the defendants in that case testified in his own defense, each was impeached with extrajudicial statements which incriminated the other defendant. The appellate court showed that the *Aranda* case acquired a constitutional basis with the decision by the Supreme Court in *Bruton v. United States* (1968) 391 U.S. 123. (*Boyd, supra*, 222 Cal.App.3d at pp. 562-563; see *People v. Anderson* (1987) 43 Cal.3d 1104.) Under *Bruton* and its progeny, the Sixth and Fourteenth Amendment rights of a defendant were violated only if the incriminating statements of a *nontestifying* codefendant were introduced against the defendant. (*Boyd, supra*, at p. 561-562.) The *Bruton* rule did not apply where the codefendant who made the statement testified, making him subject to cross-examination by the defendant who is incriminated by the codefendant's statement. (*Id.* at pp. 562-563; see also *People v. Roberts* (2010) 184 Cal.App.4th 1149, 1197.) The court in *Boyd* went on to explain that any extension of *Aranda* beyond the federal rule was abrogated by Proposition 8:

"[I]t seems very likely that Proposition 8 was crafted for the very purpose, among others, of abrogating cases ... which had elevated the procedural rights of the criminal defendant above the level required by the federal Constitution, as interpreted by the United States Supreme Court. [Citation.]" Thus, to the extent *Aranda* required exclusion of inculpatory extrajudicial statements of codefendants, even when the codefendant testified and was available for cross-examination at trial, *Aranda* was abrogated by Proposition 8. There is no federal constitutional basis for requiring exclusion of a codefendant's statements when the

codefendant testifies at trial and is subject to cross-examination.(*Boyd*, *supra*, at p. 562; similarly, see *People v. Walkkein* (1993) 14 Cal.App.4th 1401, 1407-1408.)

III.

CONCLUSION

This court should admit all of the defendant's statements in a joint trial, specifically the same portion of Paul Flores' June 19, 1996 statement that was introduced at Preliminary Hearing.

Date: May 31, 2022

Respectfully submitted,

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SUPERIOR COURT OF CALIFORNIA

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THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. PAUL RUBEN FLORES & RUBEN RICARDO FLORES, Defendants.	MONTEREY CASE NO. 22CR003712 & 22CR003713 SAN LUIS OBISPO CASE NO.: 21F-02402-A, B AFFIDAVIT OF DEPUTY DISTRICT ATTORNEY CHRISTOPHER PEUVRELLE – REQUEST FOR ORDER AND ORDER SEALING RECORDS

I am Christopher Peuvrelle, a Deputy District Attorney for San Luis Obispo County. I am the assigned prosecutor for the above-entitled case.

As the court and counsel for the defendant are well aware, there has been a great deal of public interest in this pending case. It has been the goal of all parties to this case to limit the amount of information disseminated to the public to maintain the integrity of the potential jury pool. Such efforts will help assure the defendant is able to receive a fair and impartial trial in which has now been moved to Monterey County.

In this regard, I have submitted a copy of the People's Memorandum to the Court Regarding the Defendants' Statements the People Will Introduce at Trial to be heard on June 13, 2022. In accordance with Section 6255 of the California Government Code, I am