

APPENDIX A

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

JACOB ARNOLD BOCK et al.,

Defendants and Appellants.

E070783

(Super.Ct.No. FVI1502171)

ORDER MODIFYING OPINION
AND DENYING PETITION FOR
REHEARING

[NO CHANGE IN JUDGMENT]

THE COURT:

It is ordered that the opinion filed herein on April 28, 2020, be modified as follows:

1. On page 20, after the sentence ending "... and thereby denies him due process," add the following as footnote 9:

"Although Comrie did not raise this issue in his opening brief, he filed a notice of joinder pursuant to California Rules of Court, Rule 8.200(a)(5), joining in Bock's argument. Our analysis here, rejecting Bock's argument, applies equally to Comrie."

There is no change in the judgment.

The petition for rehearing is denied.

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RAPHAEL
J.

We concur:

CODRINGTON
Acting P. J.

SLOUGH
J.

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(Super.Ct.No. FVI1502171)

OPINION

APPEAL from the Superior Court of San Bernardino County. John M. Tomberlin,
Judge. Affirmed with directions.

Robert J. Beles and Joseph L. Ryan for Defendant and Appellant Jacob Arnold
Bock.

Joshua L. Siegel, under appointment by the Court of Appeal, for Defendant and
Appellant Kyle Comrie.

Xavier Becerra, Attorney General, Julie L. Garland, Assistant Attorney General,
Eric A. Swenson and Allison V. Acosta, Deputy Attorneys General, for Plaintiff and
Respondent.

Defendants and appellants Jacob Arnold Bock and Kyle Patrick Comrie were convicted of first degree murder, first degree robbery, and first degree burglary in a joint trial conducted with separate juries. Bock's jury also found true firearms enhancements, which had been alleged only against him. The trial court sentenced Bock to 50 years to life and sentenced Comrie to 25 years to life.

Bock, who was 15 years old at the time of the murder, contends that pursuant to Senate Bill No. 1391 (2017-2018 Reg. Sess.) (Sen. Bill 1391) (Stats. 2018, ch. 1015, § 1) we should vacate his sentence and remand the matter with instructions that it be transferred from adult criminal court to juvenile court for a disposition hearing, with the jury's verdict treated as a juvenile adjudication. In addition, Bock argues that his statement to police was involuntary, that his *Miranda v. Arizona* (1966) 384 U.S. 436 rights were violated, that the jury's instructions were contradictory and confusing in certain respects, and that each of these errors requires reversal. Finally, Comrie and Bock both contend that their murder convictions must be reversed because the trial court did not instruct the jury on the additional elements of first degree felony murder required by Senate Bill No. 1437 (2017-2018 Reg. Sess.) (Sen. Bill 1437) (Stats. 2018, ch. 1015)

Bock's first argument, as the People concede, has merit. We reject defendants' remaining arguments. We therefore affirm the judgment against Comrie. We vacate the sentence imposed on Bock and remand his case to the trial court with directions to transfer it to juvenile court for an appropriate disposition.

I. BACKGROUND

On August 24, 2015, a law enforcement officer discovered the victim in this case, an older man, lying on his back partially underneath his motorhome, deceased. He had various wounds on his body that appeared to the officer to be either contusions or burn marks, and lividity and rigor mortis appeared to have set in. Forensic examination would later reveal the victim had suffered blunt force trauma to the head, torso, and extremities, possibly from being kicked or hit with a baseball bat, as well as a gunshot wound to the neck. The medical examiner opined that the gunshot wound was the immediate cause of death; the blunt force trauma to the head would also have been fatal if left untreated, but the victim was still alive when he was shot.

Bock and Comrie were interviewed separately by police, and each confessed to some involvement in the victim's death, albeit with caveats and explanations. Information from a third person also implicated Bock and Comrie in the murder. Police recovered the bat used to beat the victim. The gun used in the murder had belonged to the victim; it was taken from the scene and later destroyed by Bock and Comrie.

Bock and Comrie were both charged with one count of first degree murder (Pen. Code¹, § 187, subd. (a); count 1), one count of first degree residential robbery (§ 211; count 2), and one count of first degree burglary with a person present (§ 459; count 3)). The information further alleged with respect to counts 1 and 2 that Bock had personally and intentionally discharged a firearm, proximately causing great bodily injury (§

¹ Further undesignated statutory references are to the Penal Code.

12022.53, subd. (d)), personally and intentionally discharged a firearm (§ 12022.53, subd. (c)), and personally used a firearm (§ 12022.53, subd. (b)). With respect to count 3, the information alleged that Bock had personally used a firearm (§§ 1203.06, subd. (a)(1), 12022.5, subd. (a)). For all three counts, the information alleged that Bock “was a minor who was at least 14 years of age” at the time the offenses were committed (former Welf. & Inst. Code, § 707, subds. (d)(2)(A), (d)(2)(B) (Stats. 2010, ch. 178, § 97, operative Jan. 1, 2012)).

Bock, who was 15 years old at the time of the murder, requested before trial that his case be moved to juvenile court. In response, the prosecutor requested a transfer hearing pursuant to former Welfare and Institutions Code section 707, subdivision (a). The juvenile court conducted a transfer hearing, and it concluded that Bock’s case should be transferred to adult criminal court.

Two separate juries were impaneled, one for each defendant. The trial court instructed the juries on two theories of first degree murder: willful, deliberate, and premeditated murder, and first degree felony murder. The prosecution argued that either defendant could be convicted under either theory.

Comrie’s jury found him guilty on each of the three counts. Bock’s jury found him guilty on each of the three counts and it found each of the enhancement allegations to be true. The trial court sentenced Bock to 50 years to life, consisting of a term of 25 years to life for count 1, plus a term of 25 years to life for the section 12022.53, subdivision (d) enhancement of that count, and stayed terms for counts 2 and 3 and their

enhancements. The court sentenced Comrie to 25 years to life on count 1, and stayed terms for counts 2 and 3.

II. DISCUSSION

A. *Sen. Bill 1391*

Bock has not argued that the juvenile court erred by transferring his case to adult criminal court under the law in effect at the time. Following the enactment of Sen. Bill 1391, however, Welfare and Institutions Code section 707 no longer permits any individuals who were under 16 years of age when they committed a felony to be transferred to adult criminal court. (*People v. Castillo* (2019) 33 Cal.App.5th 393, 399; Welf. & Inst. Code, § 707, subd. (a).) The parties agree that Sen. Bill 1391 is retroactive to defendants whose cases were not final on the effective date of the legislation, January 1, 2019. The statute is ameliorative, in that it dramatically reduces the potential punishment for those who qualify for application of the statute. (*People v. Superior Court (Lara)* (2018) 4 Cal.5th 299, 308-309.)

The parties agree that Sen. Bill 1391 must be applied to this appeal because the case is not yet final, and Bock was 15 years old at the time of the murder. We note that, although most appellate courts to consider the issue have found Sen. Bill 1391 constitutional, that conclusion has not been unanimous, and the issue of whether it unconstitutionally conflicts with the voters' 2016 Proposition 57 initiative is now pending before the California Supreme Court. (See *Narith S. v. Superior Court* (2019) 42 Cal.App.5th 1131, 1136-1140 [discussing split in Courts of Appeal, noting that Supreme

Court has granted review in four cases].) Here, however, no party has challenged the constitutionality of Sen. Bill 1391. Moreover, we agree with the conclusion of the majority of appellate courts to have considered the issue, including ours, who have found Sen. Bill 1391 constitutional. (See, e.g., *B.M. v. Superior Court* (2019) 40 Cal.App.5th 742, 747.) Bock's sentence is vacated and the matter remanded for his case to be transferred to the juvenile court for an appropriate disposition. (See *People v. Castillero*, *supra*, 33 Cal.App.5th at p. 400 [so ordering in similar circumstances].)

B. Bock's Statement to Police

Bock contends that the trial court erred by admitting his statement to police, arguing that the statement should be considered involuntary under the circumstances, and that he had invoked his *Miranda* rights by requesting to speak to his father. We find no error.

1. Additional background

In September 2015, Bock was interviewed by two members of the San Bernardino County Sheriff's Department. Bock was detained at his home and then driven to the sheriff's department headquarters for the interview—a drive of about 40 minutes, during which he sat in the front seat, and was not handcuffed. Bock was informed of his *Miranda* rights before that drive and agreed to speak with the officers. Bock's discussions with the officers were recorded.

The portion of Bock's discussions with the officers that was admitted at trial was conducted in an interview room at the headquarters. One officer took the lead in

conducting the interview, though a second officer was also present and asked a few questions. During the discussion, Bock explained that the victim had been living in a motorhome on Bock's family's property, but that he had been kicked off the property by Bock's father not long before the murder. Bock initially denied knowing why the victim had been asked to leave, and said that the victim had also expressed that he did not know why Bock's father wanted him to go. Possible reasons mentioned by Bock included the victim's use of electricity repeatedly causing breakers to trip, that the victim's dog had bitten someone, and allegations "going around" that the victim was a pedophile and child molester.

Bock stated that he and his girlfriend would hang out with the victim as friends. He initially described the last time he saw the victim as being about a week before the victim was found dead. This was after the victim had been required to leave Bock's family's property, but Bock and the victim nevertheless were still "cool" with one another. Bock said that he did not believe the allegations that the victim was a pedophile; the victim had never tried to molest Bock, and he had acted kindly toward Bock, his brother, and other young family members. Bock denied ever having any "problems" with the victim, and said that he would never "do anything to hurt the guy."

After a break, the interviewer told Bock that they were talking to "multiple people," and that they knew Bock was more involved in the victim's death than he had previously let on. The interviewer encouraged Bock to explain his side of the story, telling him: "It's not a matter of if[,] Jacob, it's a matter of why. This is your time to

explain to me and [the other officer] what happened.” Bock was persuaded to change his story. He stated that he had learned from his father that the victim had sexually molested Bock’s niece, and that was why the victim had been thrown off the family’s property. Bock went to the victim’s house to confront him. The victim “started getting all loud,” and then attacked Bock, first throwing a punch and then retrieving his gun and firing a shot at him. In response, Bock started punching the victim, took the gun from him, and shot him with it.

After some further discussion of the details of this story, the interviewer suggested (without quite stating as a fact) that a neighbor’s camera had recorded Bock at the victim’s residence, and asked that Bock be “very specific” about “exactly how it went down.” Bock again told the story that he had been acting in self-defense, after confronting the victim about him molesting the young relative. Again, Bock only admitted to punching the victim with his fists before taking the gun from the victim.

The interviewer then asked: “Okay. When you first walked up, what were you holding in your hand?” Bock conceded that he had been holding “a [b]aseball bat.” He soon admitted that he had been trying to “play[] it off like it was self defense,” but that it was not. Bock admitted that he went to the victim’s home with someone else, though he initially declined to identify that person. The plan was for the other person to lure the victim out of his motorhome, and then Bock would hit him from behind and beat him up. Bock stated that he was “mad” but that he “didn’t mean for it to go the . . . way it did”; the plan went awry when the victim recognized Bock during the beating. Bock hit the

victim with a bat more times than he could remember. Regarding underlying motive for the attack, Bock explained, with profane emphasis: “I told him if he . . . came near my niece again before he . . . left I was going to . . . kill him. And he . . . did!”

Bock also admitted to taking items from the victim, including marijuana, some pipes, a box of ammunition, and the gun. According to Bock, after beating the victim, he dropped a bag of the victim’s items off at the vehicle he and Comrie had driven to the scene before returning and shooting the victim. Bock stated that he believed the victim was already dead from the beating—he was lying unconscious and unmoving—but he shot him anyway: he “[d]idn’t want to take the chance because he knew who I was.”

After a break in the discussion, the interviewer asked a question premised on the assumption that it was Bock’s brother who assisted Bock in the attack on the victim.² At the time of the interview, the police considered Bock’s brother to be a “person of interest.” Bock responded “My brother . . . was not with me.” The interviewer suggested: “you need to probably point us in the right direction, who your buddy was. I know you don’t want to be a rat but you know, certain things are pointing towards your brother.” Bock responded “My brother did not . . . do it, dude.” The interviewer asked

² The interviewer, this time the second officer who had been mostly silent during the rest of the interview, asked “When you went over, you said you and James went . . . over on your quad and you parked it over there and you said . . .” Bock then interrupted to clarify that the interviewer was referring to his brother, before denying his brother’s involvement and shortly thereafter identifying Comrie. The interviewer’s question was, it seems, a ruse: Bock had previously declined to identify the other person who participated in the murder.

who did, and Bock then identified a “friend” named “Kyle,” who he described as an adult he knew through his (Bock’s) girlfriend.

At three points during his interview, Bock either directly asked to speak to his father, or suggested that he might want to. The first time, near the beginning of the interview, came after the officer asked if Bock would be willing to take a polygraph test. Bock said that he had “no problem” taking one, but indicated that his father might have a problem with it.³

Later, after the interviewer told Bock that he did not believe his claim that he was not involved in the victim’s death and asked him to explain what really happened, Bock responded that he did not want to “say the wrong thing,” and that he “[didn’t] really know what to say.” Bock then said “I’m not gonna say anything . . . else until . . . I talk to my dad in person.” The interviewer told Bock that he was not going to be able to

³ This portion of the interview transcript reads as follows:

“Bock: I mean, I have no problem doing it but my dad-

“[Interviewer]: What do you think-

“Bock: My dad-

“[Interviewer]: What do you think those results would be if, if you know, you were to take one?

“Bock: I’m not lying so, you want to hook me up right now I’m with it, but-

“[Interviewer]: Okay.

“Bock: I ain’t got no problem taking one.”

speaking to his dad in person, and encouraged Bock to continue talking.⁴ Bock decided to do so, and the interview continued, with Bock initially claiming he killed the victim only in self defense.

⁴ This portion of the transcript reads as follows:

“[Interviewer]: All right. What happened, man?”

“Bock: Um, honestly I don’t wanna say the wrong thing. But we’re, I . . .

“[Interviewer]: You, you you you

“Bock: . . . don’t really know what to say.

“Interviewer: “Do you wanna know what-

“Bock: But I’m, I’m not gonna say anything . . .

“[Interviewer]: But-

“Bock: . . . else until . . .

“[Interviewer]: Look-

“Bock: I talk to my dad in person. That’s all . . .

“[Interviewer]: Okay.

“Bock: I’m gonna say.

“[Interviewer]: Well, I, I will tell you this much. You’re not gonna talk to your dad in person, okay? An, and you want me to level with you, right, you want me to be honest with you, yes?

“Bock: Yeah. Yeah, be s-, be straight up with me.

“[Interviewer]: You, you’re not gonna talk with your dad in person, okay? And, and your dad can’t answer some of the questions that we’re asking you. Cause you, was your dad there with you? I don’t know, I need you to explain those things to me. This is a mat-,

Finally, after Bock had already given his full account of the events, but before he had identified the other person involved, he asked: “Can I see my dad? I want to see my dad.” He did so in response to a question about whether he wanted more water or some coffee. The interviewer responded: “I don’t know if he’s here to be honest with you.” Bock reiterated: “I want to see my dad.” The interviewer responded that he did not know where Bock’s father was, but that he would at least let Bock call him. Bock then continued speaking with the officers.

this is a time where Jacob decides if he, he can own up to responsibility because it’s something that maybe, you know, you were pushed over the edge on something, and that’s, that could be explained and understood. But I can’t understand, and people won’t understand is when you just choose to ignore facts. It’s not, there’s a reason why it took this, this many days to, to come and talk to you.

“Bock: Yeah.

“[Interviewer]: You understand, so . . .

“Bock: Fuck it. With all the talking, these done [*sic.*] rather than just fucking tell you guys what fucking happened dude.

“[Interviewer]: Well go ahead.”

2. Analysis

a. Claimed Miranda violation

Bock contends that his requests to speak with his father—particularly when he stated that he did not want to say anything else until he spoke to his father in person—constituted unambiguous invocation of his Fifth Amendment right to remain silent, which should have terminated the interview. We are not persuaded.

The analysis here focuses on “whether, in light of the circumstances, a reasonable officer would have understood a defendant’s reference to an attorney [or other individual] to be an unequivocal and unambiguous request for counsel, without regard to the defendant’s subjective ability or capacity to articulate his or her desire for counsel, and with no further requirement imposed upon the officers to ask clarifying questions of the defendant.” (*People v. Nelson* (2012) 53 Cal.4th 367, 380 (*Nelson*)). As a matter of law, “a juvenile’s request to speak with a parent is neither a per se nor a presumptive invocation of Fifth Amendment rights.” (*Id.* at p. 381.) “Where, as here, a juvenile has made a valid waiver of his *Miranda* rights and has agreed to questioning, a postwaiver request for a parent is insufficient to halt questioning unless the circumstances are such that a reasonable officer would understand that the juvenile *is actually* invoking—as opposed to *might be* invoking—the right to counsel or silence.” (*Ibid.*)

“As a reviewing court, we “accept the trial court’s resolution of disputed facts and inferences, and its evaluations of credibility, if supported by substantial evidence.”” (*Nelson, supra*, 53 Cal.4th at p. 380.) “Although we review the record and independently

decide whether the challenged statements were obtained in violation of [*Miranda*], we may “give great weight to the considered conclusions” of the trial court.” (*Ibid.*)

When Bock suggested that his father might not approve of him taking a polygraph test, he did not unambiguously or unequivocally invoke his Fifth Amendment rights. Rather, a reasonable officer would have understood his reference to his father to mean only, at most, that he was reluctant to take a polygraph test without first speaking to his father. Indeed, in context, Bock even could be understood to be emphasizing his own willingness to speak to the officers, and to submit to the test, with his only concern being his father’s disapproval. It is well established that, even with a juvenile defendant, “officers need not terminate the entire interrogation” because of a “conditional invocation” of Fifth Amendment rights that is “limited to the administration of a polygraph test.” (*Nelson, supra*, 53 Cal.4th at p. 382.) Similarly, Bock’s request, made near the end of the interview, to “see” his father, was insufficient to require a halt to questioning under well-established law. (*Id.* at p. 381.)

Bock’s statement that he was not going to say anything else until he saw his father in person comes closer to an invocation of his right to remain silent. Nevertheless, in context, a reasonable officer could have understood Bock to have been expressing only a desire to consult with his father so that he did not say the “wrong thing,” not an unqualified desire to remain silent. This understanding of Bock’s statement was confirmed when the officer frankly told Bock that he was not going to get to talk to his father in person and urged him to keep answering questions, and Bock’s immediately

expressed that he was willing to “just . . . tell you guys what . . . happened” (Cf. *People v. Villasenor* (2015) 242 Cal.App.4th 42, 65-66 [defendant unambiguously and unequivocally invoked by telling the detective to take him home 13 times in 14 minutes, trying to retrieve his phone from the detective, repeatedly telling the detective to call his parents, and referencing his “rights” in demanding his parents].) The trial court correctly concluded that the officer’s decision to continue the interview by inviting Bock to “go ahead” was not a violation of Bock’s Fifth Amendment rights.

b. Claim That Statement Was Involuntary

Bock argues that, under the totality of the circumstances, his statements to police must be considered involuntary, and therefore inadmissible. We disagree.

“A statement is involuntary if it is not the product of “a rational intellect and free will.”” (*People v. Maury* (2003) 30 Cal.4th 342, 404.) The test for determining voluntariness is whether the defendant’s will was “overborne” at the time of the statement. (*Ibid.*) “A finding of *coercive* police activity is a *prerequisite* to a finding that a confession was involuntary under the federal and state Constitutions. [Citation.] A confession may be found involuntary if extracted by threats or violence, obtained by direct or implied promises, or secured by the exertion of improper influence. [Citation.] . . . The statement and the inducement must be causally linked.” (*Id.* at p. 404-405, italics added.) On appeal, we defer to the trial court’s findings of historical fact if they are supported by substantial evidence, but independently review its determination that the defendant’s statements were voluntary. (*People v. Holloway* (2004) 33 Cal.4th 96, 121.)

Having reviewed the record, we agree with the trial court that the totality of the circumstances demonstrate Bock's statement was voluntary. Although Bock was an adolescent, he had prior experience with the legal system, and demonstrated sufficient comfort with and knowledge of the process to joke about interrogation techniques and laugh with officers about the circumstances of his prior offenses.⁵ Bock was not subjected to "dominating, unyielding, and intimidating" questioning or other "overbearing tactics." (Cf. *In re T.F.* (2017) 16 Cal.App.5th 202, 209, 218 [confession of 15-year-old suspect held involuntary in part on that basis].) He was not questioned in a "leading, repeated, and suggestive fashion," so as to raise concerns about the reliability of his statements. (Cf. *In re Elias V.* (2015) 237 Cal.App.4th 568, 578, 591 [statement by 13-year-old suspect held involuntary in part because of interviewer's "aggressive, deceptive, and unduly suggestive tactics"].) Although the interview lasted several hours, it was interspersed with breaks, and there is no indication that it was unduly or unnecessarily prolonged. (See *People v. Winbush* (2017) 2 Cal.5th 402, 454 [interview sessions "were not unduly protracted" where 19-year-old defendant was interviewed in custody for about six hours before he confessed]. Bock was allowed to use the restroom when he needed it, and he was repeatedly offered water, coffee, and food. Although Bock may well have been tired, and he broke down in tears as he confessed that he had not been acting in self-defense when he killed the victim, he never asked that questioning

⁵ Near the beginning of the interview, Bock asked his two interlocutors: "This ain't going to be good cop, bad cop, is it?" The officers responded "Oh, no." and "No, it's good cop good cop."

be paused or ended so that he could rest or compose himself. (See *People v. Hensley* (2014) 59 Cal.4th 788, 814-815 [confession voluntary despite defendant's argument he was hungry and needed medical treatment where "[h]e made no requests"].)

Moreover, even at the end of the interview, Bock felt free to push back against interviewer assumptions or hypotheses. For example, he denied that a bat found at his residence was the one used to beat the victim, and he rejected the interviewer's assumption that his brother had been with him at the victim's residence. This strongly suggests that his will had not been "overborne," whether by purported coercion or by more gentle attempts to build rapport and persuade. (See *People v. Maury*, *supra*, 30 Cal.4th at p. 404.)

Bock asserts that the interviewer made veiled threats against his family, to the effect that "if he did not admit to killing [the victim], then his family would be punished." We discern no such threats in the transcript of the interview, veiled or otherwise. In the portion that is the focus of this argument, the interviewer noted that Bock had already expressed how much he valued his family, and acknowledged his complaints about how the investigation had already disrupted the family.⁶ The interviewer told Bock that his

⁶ The exchange at issue is the following:

"[Interviewer]: You know, I know you went over there, and I need you to explain what happened, all right? Listen, you talked about, you said, hey man, you guys came in there, and they slammed the gate, and my family this, my family that. And I get that man. You're a man that likes . . .

"Bock: Yeah

family members are among the “multiple people” that they had spoken to about the victim’s murder. The interviewer then urged Bock to tell his own side of the story. In context, the interviewer’s question: “well, how far do you wanna bring your family

“[Interviewer]: . . . family, right?

“Bock: Mm-hmm (affirmative).

“[Interviewer]: You’re a man that cares for your family, and I understand that, all right? And I told you I would answer that question for you, well, how far do you wanna bring your family down? You know, when people’s lives are at stake . . .

“Bock: Yeah

“[Interviewer]: . . . the truth’s gonna come out, all right?

“Bock: Mm-hmm (affirmative).

“[Interviewer]: So to me, honestly, I think you’re, you’re more of a man than a lot of people I’ve me, so let’s just talk about the truth here. Let’s just talk about the for real things, all right? And you know exactly what I’m talking about. I don’t need to sit here, and show you everything that we have. I wanna hear it from Jacob’s mouth. I don’t need to hear it from everybody else, I’m talking to the horse here. Hear it from the horse’s mouth, you heard that saying before? Hear it from the person that was involved with something. I know you were there, I know what happened, I wanna hear your side of the story, okay? It’s not a matter of if, Jacob, it’s a matter of why. This is your time to explain to me and [the other officer] what happened.

“Bock: Yeah, I understand what you’re saying.

“[Interviewer]: Mokay. People are here, you family’s here, there’s, people are talking to us up by your house, and you know what? Things happen, I understand, but you have to help me explain that.

“Bock: Yeah, I know what you mean.

“[Interviewer]: All right. What happened man?”

down” does not read as a threat, but only urging Bock to help them bring the investigation to a close, and thereby stop having to disturb the family. (See *People v. Orozco* (2019) 32 Cal.App.5th 802, 820 [“Law enforcement does not violate due process by informing a suspect of the likely consequences of the suspected crimes or of pointing out the benefits that are likely to flow from cooperating with an investigation”].) This innocuous understanding of the interviewer’s statements is supported by the interviewer’s emphasis that he just wants to “talk about the truth here” and “talk about the for real things.” Obviously, the interviewer was trying to persuade Bock to confess to his involvement in the murder, but we discern nothing constituting impermissible coercion.

Bock further complains that the officers “presented [him] with false evidence and blatant lies that his own brother had implicated him in the murder and that they had seen video footage of him at [the victim’s] trailer.” It is well established, however, that “[s]o long as a police officer’s misrepresentations or omissions are not of a kind likely to produce a *false* confession, confessions prompted by deception are admissible in evidence The cases from California and federal courts validating such tactics are legion.” (*People v. Mays* (2009) 174 Cal.App.4th 156, 165.) Here, the officers did not berate a child into admitting facts suggested by the questioning itself, as occurred in a case Bock emphasizes on appeal, *In re Elias* (2015) 237 Cal.App.4th 568, 578. Rather, the interviewer persuaded Bock that his lies were not holding up to what the officers already knew, and for the most part let Bock supply the details of each successive variant of his story. And, as noted, where the interviewer supplied an incorrect assumed detail,

as when he identified Bock's brother as the accomplice, Bock had the wherewithal to insist on his own view of the facts.

Considering the totality of the circumstances, we find the People carried their burden to show Bock's statements to police were made of his own free will.

C. Jury Instructions

Bock's jury was instructed with CALCRIM No. 372, regarding use of flight as evidence of awareness of guilt.⁷ Also, as part of its instructions regarding felony murder, the jury was instructed on the so-called escape rule, addressing how to determine when a robbery or burglary is completed.⁸ Bock has not argued, either here or in the trial court, that either of these instructions taken alone are erroneous. He asserts for the first time on appeal, however, that together the instructions are "contradictory and confusing," and thereby denied him due process. This argument fails for several reasons.

First, "the long-standing general rule is that the failure to request clarification of an instruction that is otherwise a correct statement of law forfeits an appellate claim of error based upon the instruction given." (*People v. Rundle* (2008) 43 Cal.4th 76, 151,

⁷ The instruction, as given, reads: "If a defendant fled immediately after the crime was committed, that conduct may show that he was aware of his guilt. If you conclude that a defendant fled, it is up to you to decide the meaning and importance of that conduct. However, evidence that the defendant fled cannot prove guilt by itself."

⁸ This instruction, CALCRIM No. 3261, provided in relevant part that a robbery or burglary "continues until [a defendant] has reached a place of temporary safety," and defined "place of temporary safety" to mean that "they have successfully escaped from the scene, are [not or are] no longer being chased, and have unchallenged possession of the property."

disapproved on another ground by *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22.)

Bock raised no objection to the instructions on flight or the escape rule in the trial court.

He therefore forfeited the argument he now raises for the first time on appeal.

Second, we find nothing confusing or contradictory about the instructions. There is no contradiction in the circumstance that reaching a place of temporary safety ends a robbery or burglary, and also that flight from the scene may be viewed as evidence of consciousness of guilt. Both things are simply true. The same fact may tend to exculpate Bock when viewed from one perspective (by cutting off liability for felony murder from that point forward, because the robbery or burglary is over), but also may be understood to implicate Bock from another perspective (because fleeing from the scene may be understood as consciousness of guilt). This means only that Bock was, perhaps, stuck between a rock and a hard place because of adverse evidence. It does not mean that the jury instructions were in any way erroneous or could have benefitted from further clarification. Indeed, Bock has not proposed even on appeal how, precisely, he believes the instructions could have or should have been changed to address the purported issues he now raises.

Bock's claim of instructional error is rejected, both because it was forfeited and because it is without merit.

D. Sen. Bill 1437

Comrie and Bock contend that the trial court erred by failing to instruct the jury using the additional elements of first degree felony murder enacted by Sen. Bill 1437. It

did not. Sen. Bill 1437 had not yet taken effect at the time of trial in April 2018. Sen. Bill 1437 provides a procedure for defendants convicted under the former law to seek relief, but Comrie and Bock have not yet availed themselves of it.

Sen. Bill 1437, which took effect on January 1, 2019, “addresses certain aspects of California law regarding felony murder and the natural and probable consequences doctrine[.]” (*People v. Martinez* (2019) 31 Cal.App.5th 719, 722 (*Martinez*).) Before Sen. Bill 1437, “a person who knowingly aided and abetted a crime, the natural and probable consequence of which was murder or attempted murder, could be convicted of not only the target crime but also of the resulting murder or attempted murder.” (*People v. Munoz* (2019) 39 Cal.App.5th 738, 749 (*Munoz*), review granted Nov. 26, 2019, S252291.) “This was true irrespective of whether the defendant harbored malice aforethought. Liability was imposed “‘for the criminal harms [the defendant] . . . naturally, probably, and foreseeably put in motion.’”” (*In re R.G.* (2019) 35 Cal.App.5th 141, 144.)

Sen. Bill 1437 “redefined ‘malice’ in section 188. Now, to be convicted of murder, a principal must act with malice aforethought; malice can no longer ‘be imputed to a person based solely on [his or her] participation in a crime.’ (§ 188, subd. (a)(3).)” (*In re R.G.*, *supra*, 35 Cal.App.5th at p. 144.) It also amended section 189 to “ensure[] that murder liability is not imposed on a person who did not act with implied or express malice, was not the actual killer, did not act with the intent to kill, or was not a major participant in the underlying felony who acted with reckless indifference to human life.”

(*Munoz, supra*, 39 Cal.App.5th at p. 749-750; § 189, subd. (e).) Sen. Bill 1437 “also added section 1170.95, which permits persons convicted of murder under a felony murder or natural and probable consequences theory to petition in the sentencing court for vacation of their convictions and resentencing, if certain conditions are met.” (*Munoz, supra*, 39 Cal.App.5th, at p. 750.)

The question of whether Sen. Bill 1437 applies retroactively to cases not yet final on appeal is being considered by our Supreme Court. (See *People v. Gentile*, review granted Sept. 11, 2019, S256698.) So far as we are aware, the courts of appeal that have examined the issue in published opinions have all found that it does apply retroactively, but that its retroactive effect is statutorily channeled through the section 1170.95 petition procedure in all cases, final and nonfinal alike; courts, including this one, have declined to apply the newly revised law of felony murder as a basis for reversal in appeals where the trial took place before Sen. Bill 1437 took effect and the defendant has not sought relief pursuant to section 1170.95. (*Martinez, supra*, 31 Cal.App.5th at pp. 724-730; see also *People v. Cervantes* (Mar. 9, 2020) 46 Cal.App.5th 213, 220 [following *Martinez*]; *People v. Anthony* (2019) 32 Cal.App.5th 1102, 1147, 1153 [same]; *In re Taylor* (2019) 34 Cal.App.5th 543, 561-562 [same]; *In re R.G.*, *supra*, 35 Cal.App.5th at p. 151 [same].) Bock and Comrie here repeat arguments considered and rejected by these courts.

We too find *Martinez*’s reasoning persuasive and will adopt it. Bock and Comrie may petition for relief in the trial court pursuant to section 1170.95; we express no view as to their prima facie eligibility for relief, or, assuming eligibility, whether relief may

ultimately be warranted. We conclude here only that Sen. Bill 1437 does not require that their convictions be reversed so that they may be retried under the new standard for felony murder liability.

III. DISPOSITION

The judgment against Comrie is affirmed. The sentence previously imposed on Bock is vacated; his conviction is affirmed, but must be treated as a juvenile adjudication under Sen. Bill 1391. The matter is remanded to the trial court with directions to transfer Bock's case to the juvenile court for an appropriate disposition.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RAPHAEL
J.

We concur:

CODRINGTON
Acting P. J.

SLOUGH
J.

7-6-20

SUPREME COURT
FILED

Court of Appeal, Fourth Appellate District, Division Two - No. E070783

JUN 24 2020

Jorge Navarrete Clerk

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IN THE SUPREME COURT OF CALIFORNIA

Deputy

En Banc

THE PEOPLE, Plaintiff and Respondent,

v.

JACOB ARNOLD BOCK et al., Defendants and Appellants.

The petition for review is denied.

CANTIL-SAKAUYE

Chief Justice

**Additional material
from this filing is
available in the
Clerk's Office.**