NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

GONZALO CURIEL , PETITIONER

v.

STATE OF CALIFORNIA, RESPONDENT

ON THE PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA,
SIXTH APPELLATE DISTRICT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. In order the apply the "inevitable discovery rule" to uphold an otherwise illegal search and seizure is it necessary for the prosecution to prove that the alleged alternative police conduct was an ongoing legitimate investigation that was simultaneously occurring at the time that the improper conduct took place and had brought the police to the brink of discovering the disputed evidence when that misconduct occurred?

2. Is it improper to apply the "inevitable discovery rule" to uphold an otherwise illegal warrantless search and seizure where the only conceivable claim is that the police hypothetically could have sought and obtained a search warrant at some later date after the occurrence of the misconduct that could have allowed the police to conduct that search and seizure even though the police at the time of the illegal warrantless search and seizure were not even thinking of obtaining, or even trying to obtain, a search warrant?

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OPINION AND ORDER BELOW

The unpublished written opinion of the California Court of Appeal, Sixth Appellate District, filed on October 20, 2020, affirming a judgment of conviction entered against petitioner Gonzalo Curiel in Monterey County Superior Court Case Number SS152108B appears as Appendix "A".

The unreported order of the California Supreme Court filed on December 30, 2020, denying a petition for review in connection with the written opinion of the California Court of Appeal, Sixth Appellate District, filed on October 20, 2020, appears as Appendix "B".

JURISDICTIONAL STATEMENT

The unpublished written opinion of the California Court of Appeal, Sixth Appellate District, affirming the judgment of conviction was filed on October 20, 2020.

The unpublished order of the California Supreme Court denying the petition for review was filed on December 30, 2020.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(a).

PERTINENT CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Fourth Amendment:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

United States Constitution, Fifth Amendment:

"No person shall be . . . deprived of life, liberty, or property, without due process of law[.]"

United States Constitution, Fourteenth Amendment, Section 1:

"No State shall . . . deprive any person of life, liberty, or property, without due process of law[.]"

STATEMENT OF THE CASE

On April 23, 2018, the jury returned verdicts of guilty on counts 1 and 2 (two first degree premeditated murder charges (California Pen. Code §§ 187, 189)[1]), guilty on count 3 (a felony child abuse charge (§ 273a, subd. (a)), and guilty on counts 4, 5 and 6 (three torture charges (§ 206)). As to enhancements and special allegations, the jury found to be true all of the following enhancements and special allegations: two special circumstance allegations of murder by torture (§ 190.2, subd. (a)(18)); a special circumstance allegation for multiple murders (§ 190.2, subd. (a)(3)) relating to counts 1 and 2; an enhancement for infliction of great bodily injury (§ 12022.7, subd. (a)) relating to count 3 (the felony child abuse charge as to the one surviving victim); and an enhancement for infliction of great bodily injury (§ 12022.7, subd. (a)) relating to count 6 (the torture charge as to a surviving victim). (2CT 341-349.)[2]

On July 11, 2018, sentence was imposed against petitioner. As to the two counts for the murders with special circumstances (counts 1 and 2) petitioner received two life sentences without possibility of parole.[3] As to counts 4 and 5 (the torture convictions pertaining to the two murder

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1. Hereinafter, unless otherwise indicated, all section references are to the California Penal Code.

2. Hereinafter all references to the Clerk's Transcript will be designated by the two letters "CT" and the digital number preceding that designation will indicate the volume of the Clerk's Transcript containing that page or pages. Similarly, hereinbelow all references to the Reporter's Transcript will be designated by the two letters "RT" and the digital number preceding that designation will indicate the volume of the Reporter's Transcript containing that page or pages.

3. Due to a state legislative enactment that occurred after the commission of the crimes charged in petitioner's case, petitioner is entitled to a parole hearing during the 25th year of his incarceration. As explained in People v. Ochoa, 53 Cal.App.5th 841, 850 (2020), ". . . during its 2016–2017 session the [state] Legislature passed Senate Bill No. 394, extending the availability of a mandatory parole hearing to juveniles sentenced to life without parole. With the addition of section 3051, subdivision (b)(4), a juvenile sentenced to life without parole is now entitled to a youth offender parole hearing during that offender's 25th year of incarceration. By affording those individuals a meaningful opportunity for release, the Legislature has effectively mooted any claim that imposition of life without parole on a juvenile offender violates the Eighth Amendment."

victims involved in counts 1 and 2) life sentences were imposed but where stayed pursuant to the multiple punishment proscriptions of section 654. As to count 6 (the torture of a victim who survived) a life sentence was imposed which was to be served consecutive to the life without possibility of parole sentences imposed on counts 1 and 2. As to count 3 (the felony child abuse conviction which pertained to the same victim of the torture conviction in count 6), a six year aggravated term was imposed but stayed pursuant to the multiple punishment proscriptions of section 654, and a three year great bodily injury enhancement (§ 12022.7, subd. (a)) was imposed but also was stayed pursuant to the multiple punishment proscriptions of section 654. (2 CT 370-372, 375-376.)

STATEMENT OF THE FACTS AS TO THE ISSUE OF GUILT

In April 2014, 38 year old Tami Huntsman lived at 501 Fremont Street, Unit #1, in Salinas, California, with her then husband Christopher Criswell, her then14 year old son Daniel Criswell, and her 10 year old twins (hereinafter, for reasons confidentiality, they will be referred to as "Twin Boy" and "Twin Girl"). Also living with Huntsman and her husband at that time were five year old Shaun Tara, two year old Delylah Tara, and their eight year old half sister (hereinafter, for reasons of confidentiality, this latter eight year old child will be referred to as "Jane Doe"). Huntsman took custody of Shaun, Delylah and Jane Doe after their father was incarcerated in southern California.

Sometime in late 2014 or early 2015, Daniel Criswell's friend, petitioner, moved into the Criswell/Huntsman home. Thereafter, Huntsman began to have a sexual affair with petitioner who was then 17 years old. When Huntsman's then husband (Christopher Criswell) discovered the affair, he left Huntsman around January 11, 2015. On April 15, 2015, Huntsman's teenage son Daniel Criswell was incarcerated, thus leaving in the household Huntsman, petitioner and the five other children.

Petitioner did not like Jane Doe, Shaun and Delylah, and he repeatedly abused them physically, denied them food and punished them by making them lie naked on the cold cement floor of a shower for hours on end while being doused with freezing water. Huntsman participated in these acts of physical child abuse and neglected to get them medical care for their injuries. Also, the these three children would be zip tied to their beds or to chairs to prevent them from running around. (15RT 4206-4252.)

On Halloween 2015, Shaun, then age 6, and Delylah, then age 3, were seen alive by Huntsman's mother Joy Tara. At that time, according to Joy Tara, Shaun and Delylah were in bad shape and very skinny. (13RT 3763-3764.) The last day Shaun and Delylah were seen alive by their sister Jane Doe was during the evening of November 25, 2015, which was the night before Thanksgiving. Late that night Jane Doe, then age 9, overheard petitioner and Huntsman arguing about Shaun and Delylah. After that night Jane Doe never saw her brother or sister again. (15RT 4251.)

After Thanksgiving, Huntsman and petitioner told the other children (i.e., Twin Boy, Twin Girl and Jane Doe) that Shaun and Delylah had been taken somewhere for adoption, but Huntsman and petitioner would not say where. (13RT 2790; 15RT 4251.) Huntsman and petitioner then abruptly packed up their belongings, loaded the belongings into Huntsman's Toyota 4Runner SUV, and along with Twin Boy, Twin Girl and Jane Doe, proceeded to go to northern California without any real long term planning. (13RT 2790-2791; 15RT 4251-4252.)

In late November and early December 2015, Huntsman, petitioner, Twin Boy, Twin Girl and Jane Doe visited several different cities in northern California, including Redding, Shingletown, where some of Huntsman's relatives lived, and Quincy, where the mother of Huntsman's nephew lived. (11RT 3063-3086, 3100-3112.) In Quincy, Huntsman applied for Section 8 housing on

December 7, 2015, listing Shaun, Delylah and Jane Doe as part of her household. (11RT 3117-3125.) That same day, Huntsman filled out an intake form at the Plumas Crisis Intervention and Resource Center that did not list Jane Doe, Shaun or Delylah as members of the household. (11RT 3127-3140.)

Huntsman and petitioner told family members, whom they visited, that Jane Doe had mental problems, would injure herself intentionally, and was "slow." (12RT 3313-3341.) April Lorenzo (the mother of Huntsman's nephew) spoke to Jane Doe and realized that Jane Doe was the victim of abuse. April Lorenzo contacted a friend, Kimberly Browning, who observed Jane Doe in person, and who then reported the abuse to Child Protective Services. (12RT 3342-3348; 3422-3433.)

On December 11, 2015, Plumas County Sheriff's Deputy Tyler Hermann and Child Protective Services Social Workers Sara James and Ana Marmolejo contacted Huntsman and petitioner at their rented home in Quincy. They found Jane Doe inside Huntsman's SUV. Jane Doe was extremely emaciated, and she had a broken collarbone, facial bruising, and other injuries. Deputy Hermann then arrested Huntsman and petitioner for felony child abuse. (13RT 3648-3362; 3666-3673, 3678-3686.)

Jane Doe then was taken to the Plumas District Hospital, where she was treated by nurse Ashley Blesse and Dr. Jason Reinking. Jane Doe advised them of the extent of the abuse she had suffered at the hands of petitioner and Huntsman. Due to the severity of Jane Doe's injuries, she was transferred to the University of California Davis Medical Center, where she was treated by pediatric specialist Dr. Joanne Natale. (13RT 3687-3726, 3738-3742.)

When Joy Tara (Huntsman's mother) learned of the arrests of Huntsman and petitioner, she contacted Plumas County Detective Sergeant Steven Peay, and demanded to know where were Shaun and Delylah. At that point no one had mentioned to anyone in northern California anything about the existence of Shaun or Delylah. Thereafter, when she was asked, Jane Doe did not know the location

of her younger brother Shaun or her younger sister Delylah. Detective Sergeant Peay then initiated an immediate search for Shaun and Delylah in Quincy and Salinas. (13RT 3792-3796.) The steps involved in that search will be set forth shortly hereinbelow.

Ultimately, on December 13, 2015, the deceased bodies of Shaun and Delylah were found inside a blue plastic storage container inside storage unit #32 at AM Enterprise Stor-All in Redding, California. (14RT 3945-3952, 4054-4057.)

Dr. Mark Super, a forensic pathologist, performed autopsies on Shaun and Delylah. He opined that Shaun died of multiple blunt impact injuries and extreme malnutrition. As to Delylah's cause of death, Dr. Super opined that she died as a result of blunt impact head injuries, with extreme malnutrition listed as another significant condition. (15RT 4335-4380.)

STATEMENT OF THE FACTS RELEVANT TO THE SEARCH AND SEIZURE ISSUES[4]

At about 2:45 P.M., on December 11, 2015, Officer Tyler Hermann of the Plumas County Sheriff's Office was told by his dispatcher to contact Child Protective Services (CPS) worker Ana Marmolejo in regards to a welfare check. When Officer Hermann contacted Ana Marmolejo, the officer learned that Ana Marmolejo had received a report of a nine year old girl who was living at 2110 East Main Street, #1, in Quincy, Plumas County, and who appeared to be malnourished and physically abused. Ana Marmolejo advised Officer Hermann of the name of this nine year old girl. (3RT 607-612.) As noted earlier hereinabove throughout this petition this nine year old child is being referred to as Jane Doe.

Once Officer Hermann and Ana Marmolejo meet up with each other outside of the premises

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4. Since search and seizure issues were the only pertinent issues raised in petitioner's appeal in the state appellate courts, the relevant facts pertaining to the search and seizure issues are being set forth under this separate heading.

at 2110 East Main Street in Quincy, they contacted the apartment manager. At that time Officer Hermann learned that a woman by the name of Tami Huntsman and her three children had just begun moving into unit #1, that all three of the children appeared to be well taken care of, well fed, very pleasant, well mannered, appropriately natured and had no bruises on their faces. Office Hermann asked the apartment manager if the name of any of these three children was Jane Doe. The apartment manager said that the name Jane Doe was not the name of any of these three children. (3RT 611-613, 615.)

Officer Hermann, Ana Marmolejo, and another CPS worker by the name of Sara James, who had arrived on the scene, then went to unit #1 and contacted Tami Huntsman. Ana Marmolejo told Huntsman the reason for the CPS contact. Huntsman allowed the officer and the two CPS workers inside. In addition to Huntsman, the unit was occupied by two 12 year old twins (i.e., Twin Boy and Twin Girl) and 17 year old petitioner. All three of these juveniles appeared to be well taken care of and did not have any obvious signs of injuries. (3RT 613-614, 617.)

Huntsman advised the officer and the two CPS workers that she had just returned from the store and that Jane Doe was still inside her vehicle. Officer Hermann then went out to make contact with Jane Doe. Inside Huntsman's vehicle, which was a dark blue 1996 Toyota Four-Runner, California license plate number 6XGG487, Officer Hermann located nine year old Jane Doe who clearly appeared to be a significantly abused child. As Officer Hermann talked to Jane Doe, the child eventually implicated both petitioner and Huntsman in the abuse that had been inflicted upon her. (3RT 614-616, 628-629.)

Officer Hermann recontacted Huntsman inside unit #1. Huntsman said that she was the mother of Twin Boy, Twin Girl, and petitioner. Huntsman said that she had been granted legal guardianship of Jane Doe after Jane Doe's mother died about two years earlier. Huntsman denied

any culpability with regard to the injuries of Jane Doe. (3RT 616-618, 633-635.) Officer Hermann then recontacted petitioner inside unit #1 to question him about the "incident." Prior to questioning petitioner, Officer Hermann advised petitioner of the "Miranda" rights. Petitioner admitted that he had punched Jane Doe in the arm on two occasions -- the first time about a week earlier, and the second time the previous day. Petitioner denied ever striking Jane Doe in the facial area. Also, petitioner would not provide any statement about the relationship between Jane Doe and Huntsman. However, during these discussions, petitioner always referred to Huntsman as his "mom." Officer Hermann attempted to question petitioner further. However, at that point petitioner invoked his "Miranda" rights by stating that he wanted to talk to an attorney. Officer Hermann then arrested petitioner for felony child endangerment, and placed him in handcuffs. (3RT 618-619, 633-635.)

Officer Hermann recontacted Huntsman, arrested her for felony child endangerment and placed her in handcuffs. Officer Hermann then had the two CPS workers take Jane Doe, Twin Boy and Twin Girl into custody for child protective purposes. Eventually, Officer Hermann transported Huntsman to the Plumas County jail for booking, and then transported petitioner to the Plumas County Probation Department for booking. Since Plumas County did not have a locked juvenile facility to house in-custody juvenile offenders, petitioner was transported to the Butte County Juvenile Hall for housing at that county's locked juvenile facility. (3RT 621-622.)

Then, at about 11:20 A.M., on December 13, 2015, Sergeant Peay of the Plumas County Sheriff's Office contacted Joy Tara, who was Huntsman's mother, by telephone and engaged in a telephone conversation with Joy Tara. Joy Tara asked about, and discussed with, Sergeant Peay the nature of the charges then pending against her daughter (Huntsman) in Plumas County. During that telephone conversation Joy Tara inquired as to the condition of a six year old boy by the name of Shaun and a three year old girl by the name of Delylah both of whom were the younger siblings of

Jane Doe who had been in the custody of Huntsman and whom she (Joy Tara) had not seen since November 27, 2015. Up to that point in time no one in law enforcement in Plumas County had known anything about the existence, the whereabouts or the condition of Shaun or Delylah. Joy Tara went on to relate that she was very concerned about the condition of Shaun and Delylah and feared that they might be dead as result of the condition those two children were in when she (Joy Tara) last observed them. Joy Tara felt that the Shaun and Delylah might be buried somewhere. (3RT 641-644; Exhibit 6 at the suppression hearing.)

At 3:46 P.M., on December 13, 2015, Sergeant Peay contacted Huntsman at the Plumas County Jail and asked her about Shaun and Delylah. Huntsman said that she had relinquished the two children "down there" [Salinas] before leaving. When Sergeant Peay asked Huntsman "to whom," Huntsman said to "someone in the county." Huntsman then said that she wanted to speak to an attorney. Upon further questioning by the officer, Huntsman related that Shaun and Delylah were picked up from her in Salinas at a motel by some "agency" and that all of that had occurred about one month earlier. At that point Huntsman said three or four more times that she wanted to speak to attorney. Sergeant Peay then stopped talking to Huntsman, and he left the jail facility. (3RT 646-650.)

At 4:30 P.M., on December 13, 2015, Sergeant Peay called the Butte County Juvenile Detention Center in Oroville and explained the nature of the investigation in which he was involved and the need for someone at that facility to talk to petitioner about the two missing children. The person with whom Sergeant Peay was talking said that he or she would have to get in touch with Nino Pinocchio, who was the manager of the Butte County Juvenile Detention Facility, for authorization to do so. That person also explained that Pinocchio was not currently working at the facility. A short time later, Sergeant Peay received a telephone call from Pinocchio and explained

the situation to him. Pinocchio indicated that he was not working at that time, but that he would head to the Butte County Juvenile Detention Facility and attempt to talk to petitioner. Sergeant Peay told Pinocchio to ask petitioner where Shaun and Delylah were and not to ask petitioner any further questions. (3RT 651-652, 660-662, 776-777.)

What happened thereafter, in connection with the contacts that were made with petitioner, goes as follows:

According to Pinocchio, pursuant to his telephone discussions with Sergeant Peay it was deliberately decided not to advise petitioner of his "Miranda" rights, and in fact before Pinocchio commenced to talk to petitioner, he (Pinocchio) told petitioner that he (Pinocchio) was not going to advise him (petitioner) of his "Miranda" rights. (3RT 779-780, 800-804.)

Immediately thereafter, Pinocchio proceeded to ask petitioner about the whereabouts of Shaun and Delylah. Petitioner again stated, several times, that he wanted to talk to an attorney. Pinocchio ignored all those requests by petitioner to talk to an attorney, and he continued to ask petitioner about the whereabouts of Shaun and Delylah. Pinocchio and a juvenile hall counselor by the name of Ayana Venable then continuously questioned petitioner from many different angles for well over an hour about the location of Shaun and Delylah. Petitioner kept responding that he did not know what they were talking about and that they should talk to his mother about that. It was later established that the "mother" petitioner was talking about was Huntsman. (3RT 804-806.)

After the passage of more time, Pinocchio, as a deliberate ploy, asked petitioner if he (Pinocchio) were able to get a phone call arranged with Huntsman and she told him (petitioner) that it was OK to share information with "us" (Pinocchio and Venable) would he (petitioner) do so?[5]

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5. At one of the hearings on petitioner's suppression motion, Pinocchio admitted that regardless of what he (Pinocchio) told petitioner about getting to call, and talk to, his mother

[footnote 5 continues on to the next page]

Pinocchio then, in a rhetorical way, asked petitioner that if Huntsman were to tell him (petitioner) in a phone call to go ahead and share information, would he (petitioner) tell "us" (Pinocchio and Venable) what he (petitioner) knew about the whereabouts of the two children. Petitioner then very carefully said that he was not admitting knowing anything, but if they were to allow him to speak with Huntsman on the phone and Huntsman confirmed that it was OK for him (petitioner) to share information he would share whatever information he may or may not have. Pinocchio and Venable continued to "negotiate" with petitioner to exchange information for a phone call. At that point the negotiating was not proceeding much further, and Pinocchio at that time was advised that he had a call from Sergeant Peay of the Plumas County Sheriff's Office. (3RT 806-809.)

Pinocchio then went to another room and took that call from Sergeant Peay. Pinocchio advised the sergeant that he (Pinocchio) believed that petitioner knew, or had information about, the location of the missing children. Pinocchio said that he was just beginning to make some headway with petitioner, and that he wanted to continue. Sergeant Peay told Pinocchio to continue. (3RT 809-810.)

When Pinocchio returned to talk more with petitioner, he (Pinocchio), as part of a ploy, took the approach that they (Pinocchio and Venable) were about done with their questioning and there really was nothing left that he (Pinocchio) could do to help him (petitioner) if he were not willing to give them some information. Petitioner immediately asked Pinocchio about the chances for a phone call with Huntsman. Pinocchio, as a further part of the ploy, told petitioner that he had asked Plumas County about that and they were not willing to do that unless he (petitioner) gave them (Pinocchio and Venable) some information. Petitioner kept up with his "negotiating," and it became

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(Huntsman) it was just a ploy to get petitioner to talk about the whereabouts of the two missing children and that petitioner was never going to be able to have such a call. (3RT 799.)

even more apparent to Pinocchio that petitioner was beginning to let his guard down and really wanted to speak with his "mom" to get permission to talk. Pinocchio told petitioner that it was becoming obvious to him (Pinocchio) that he (petitioner) really wanted to share what he knew with them (Pinocchio and Venable), but that he (petitioner) really wanted a phone call with Huntsman and he (petitioner) was worried about what might happen to him. (3RT 785-786, 810-812.)

Petitioner very quickly began to break down emotionally. He placed his head down on a table into his folded arms and looked as though he was beginning to cry. Pinocchio explained to petitioner that it must be exhausting to be holding this information in and that the continuous lying must be really bothering him. Pinocchio reiterated that he was not investigating what happened, nor did he even want to know what happened and that he only wanted to know where the children were and if they were "OK." Pinocchio also explained to petitioner that it was obvious that he was really worried about his mother and it was apparent that he was trying to protect her. Pinocchio told petitioner that he (Pinocchio) did not want to know what, if anything Huntsman did, that he (Pinocchio) would not ask him about that subject, and that he (Pinocchio) only wanted to know where the children were located. Petitioner finally started to tell Pinocchio and Venable something. Petitioner looked up, looked at both Pinocchio and Venable, and, for the first time, explained that the children were in a mini-storage place in Redding. (3RT 787-790, 812-814.)

Although petitioner could not verbally state the exact mini-storage place by name or address that was in Redding where the children could be found, nevertheless, by way of photos from Google Earth and Google Street View that were presented to petitioner by Pinocchio, it was determined that the mini-storage place in question was located at 2887 Tarmac Road in the City of Redding in Shasta County, California. (1CT 155; 3RT 791-795, 813-814.)

Also, in the interview in question done by Pinocchio and Venable at the Butte County

Juvenile Detention Facility, when Pinocchio ultimately asked petitioner if there was any chance that the authorities would find the children alive, petitioner's demeanor immediately charged, he sulked down in his chair, looked down at the table, sighed, looked up at Pinocchio and shook his head back and forth indicating a "no" answer. Pinocchio then asked petitioner, "there's no chance they are alive?" Petitioner again shook his head back and forth indicating a "no"answer and stated quietly "no." (3RT 813-815.)

Thereafter, at approximately 9:00 P.M., on Sunday, December 13, 2015, using the information initially coming from Pinocchio, officers from the City of Redding Police Department went to the mini-storage place in issue and were able to determine that Huntsman, on December 4, 2015, had rented unit #32 at that storage facility for one month. (1CT 155; 3RT 676-677.) Officers from the Redding Police Department entered that storage unit without a warrant and located in that storage unit, among other things, a rubber storage tote that contained the obviously deceased bodies of two young children. The officers then walked out of the storage unit, did not remove anything from the storage unit and proceeded to prepare a search warrant affidavit for the issuance of a search warrant for that storage unit. (3RT 677-680, 714-716; Exhibit 4 at the suppression hearing.)

At 4:06 A.M., on December 14, 2015, Judge Daniel E. Flynn of the Superior Court of Shasta County issued a search warrant for unit #32 at Enterprise Stor-All at 2887 Tarmac Road in Redding, California, for, among other things, human remains and any containers, bag, suitcase, or luggage located inside that storage unit. The factual matters in the search warrant affidavit establishing the probable cause to search of the storage unit for the human remains, and other items relevant thereto, were based upon the information obtained from petitioner at the juvenile detention facility in Butte County as described hereinabove. (1CT 151-156.) The authorities then executed that search warrant, and seized, among other things, the obviously deceased bodies of the two young children previously

located in that storage unit during the earlier search of that storage without a warrant. (1CT 158-159.) Subsequent thereto, those two bodies were identified as six year old Shaun and three year old Delylah.

Thereafter, at 8:30 A.M., on December 15, 2015, Judge Daniel E. Flynn of the Superior Court of Shasta County issued a search warrant for, among other things, the dark blue 1996 Toyota Four-Runner, California license plate number 6XGG487, belonging to Huntsman, which at that time was stored at the Plumas County Sheriff's Armory located at 75 Redburg Lane, in the City of Quincy, Plumas County, California. One of the paragraphs set forth in the affidavit in support of that search warrant described the earlier finding of the bodies of six year old Shaun and three year old Delylah. (1CT 161-174.) Also, that search warrant affidavit had attached thereto a copy of the search warrant and search warrant affidavit relating to the earlier search and seizure at storage unit #32 in the City of Redding as discussed hereinabove. (1CT 175-180.)

Eventually, at approximately 9:30 A.M., on December 18, 2015, at a storage facility in Salinas after the dark blue 1996 Toyota Four-Runner, California license plate number 6XGG487, belonging to Huntsman had been transported on a flatbed tow truck from Redding, California, to Salinas, California, on the previous day of December 17, 2015, a search of that vehicle commenced. During that search a lease agreement for the storage unit #32 was located in the driver's side door pocket of Huntsman's blue Toyota 4-Runner. (4RT 906-909, 912-914.)

THE RULINGS OF THE TRIAL COURT ON THE SEARCH AND SEIZURE ISSUES

In ruling on the search and seizure issues the trial court in substance found that there had been a violation that of petitioner's Miranda rights that tainted the finding of the bodies of the two deceased children in the storage unit in Redding unless there was some legal excuse, exception or justification that overcame that unlawful taint. The one and only legal excuse, exception or

justification that the trial court found, that allegedly overcame that illegal taint, was the "inevitable discovery" rule.

As will be established in what follows in this petition, that finding by the trial court was in error and the Court of Appeal opinion on that issue is contrary to well established law in federal appellate court opinions, including opinions of this Court.[6]

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6. In addition to the "inevitable discovery" rule, the prosecution, in its opposition to petitioner's suppression motion, set forth other alleged legal excuses, exceptions or justifications for the search and seizure in issue, but which were not specifically relied upon by the trial court in its ruling denying petitioner's suppression motion and were not considered or addressed by the California Court of Appeal in its opinion in this matter. Those other legal excuses, exceptions or justifications propounded by the prosecution in the trial court, and not considered by the Court of Appeal, were as follows: (1) there was a pubic or private safety exception to the Miranda rules that excused any Miranda violation in this case; (2) petitioner lacked standing to object to any search and seizure of the storage unit in Redding where the two bodies were found; and (3) there was a search clause in the storage unit rental contract that waived any Fourth Amendment issues. Since those issues were not addressed or considered by the Court of Appeal in its opinion in this matter those issues will not be discussed in this petition.

REASONS FOR GRANTING CERTIORAI

1. This Court needs to resolve the issue that in order apply the "inevitable discovery rule" to uphold an otherwise illegal search and seizure it is necessary for the prosecution to prove that the alleged alternative police conduct was an ongoing legitimate investigation that was simultaneously occurring at the time that the improper conduct took place and had brought the police to the brink of discovering the disputed evidence when that misconduct occurred.

2. This Court also needs to resolve the issue that it is improper to apply the "inevitable discovery rule" to uphold an otherwise illegal warrantless search and seizure where the purported claim of inevitable discovery is that the police hypothetically could have sought and obtained a search warrant at some later date after the occurrence of the misconduct that could have allowed the police to conduct that search and seizure even though the police at the time of the illegal warrantless search and seizure were not even thinking of obtaining, or even trying to obtain, a search warrant.

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DISCUSSION

1. Preliminary Observation as to a Miranda Violation:

Before discussing the total inapplicability of the inevitable discovery doctrine to this case it is first necessary to establish the outrageousness of the Miranda violation that occurred in this matter.

Clearly, there was a violation of the Miranda right to counsel in this case when petitioner asserted his right to counsel in Quincy when initially detained and arrested and then there was another violation of his Miranda right to counsel when he reasserted that right to counsel in the Butte County juvenile facility where the interrogators (1) ignored petitioner's prior assertion of his right to counsel in Quincy, (2) intentionally did not readvise petitioner of his Miranda rights at the Butte County juvenile facility, (3) ignored petitioner's request at the Butte County juvenile facility to speak to an attorney and (4) lied to petitioner that he could speak to his "mother" (Huntsman) if he told them where the two children could be found.

In Edwards v. Arizona, 451 U.S. 477, 485 (1981) this Court said the following: "[I]t is inconsistent with Miranda and its progeny for the authorities, at their instance, to reinterrogate an accuse in custody if he has clearly asserted his right to counsel."

Also, in Edwards v. Arizona, supra, 451 U.S. 477, 485, this Court specifically stated, "Miranda itself indicated that the assertion of the right to counsel was a significant event and once exercised by the accused, 'the interrogation must cease until an attorney is present.'"

As this Court additionally said in the Edwards case, ". . . we now hold that when an accused has invoked his right to have counsel present during custodial interrogation, a valid waiver of that right cannot be established by showing only that he responded to further police-initiated custodial interrogation even if he has been advised of his rights. We further hold that an accused, such as Edwards, having expressed his desire to deal with the police only through counsel, 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." (Supra, 451 U.S. at pp. 484-485.)

Furthermore, in Smith v. Illinois, 469 U.S. 91, 98-99 (1984), this Court stated the following: "*Edwards* set forth a 'bright-line rule' that *all* questioning must cease after an accused requests counsel. [Citation.] In the absence of such a bright-line prohibition, the authorities through '[badgering]' or 'overreaching' -- explicit or subtle, deliberate or unintentional -- might otherwise wear down the accused and persuade him to incriminate himself notwithstanding his earlier request for counsel's assistance. [Citations.] With respect to the waiver inquiry, we accordingly have emphasized that a valid waiver 'cannot be established by showing only that [the accused] responded to further police-initiated custodial interrogation.' [Citation.] Using an accused's subsequent responses to cast doubt on the adequacy of the initial request *itself* is even more intolerable. 'No authority, and no logic, permits the interrogator to proceed . . . on his own terms as if the defendant had requested nothing, in the hope that the defendant might be induced to say something casting retrospective doubt on his initial statement that he wished to speak through an attorney or not at all.' [Citation.]" (Italics in original.)

Furthermore, no one can claim (1) that due to the fact that at the time of the first questioning of petitioner at the apartment in Quincy that questioning only pertained to Jane Doe, and not Shawn and Delylah, and/or (2) that due to the fact that the police did not know anything about the two missing children (Shawn and Delylah) at the time of the initial questioning in Quincy, somehow the earlier Miranda assertion to the right to counsel in Quincy evaporated and did not carry over to the later questioning of petitioner at the Butte County juvenile detention facility in connection with the matters pertaining to the whereabouts and conditions of Shawn and Delylah. This type of argument

was soundly rejected by this Court in the case of Arizona v. Roberson, 486 U.S. 675 (1988).

In the Roberson case this Court stated, "[a]s a matter of law, the presumption raised by a suspect's request for counsel -- that he considers himself unable to deal with the pressures of custodial interrogation without legal assistance -- does not disappear simply because the police have approached the suspect, still in custody, still without counsel, about a separate investigation." (Supra, 486 U.S. 675, 683.)

Also, in Roberson, this Court said, "[e]specially in a case such as this, in which a period of three days elapsed between the unsatisfied request for counsel and the interrogation about a second offense, there is a serious risk that the mere repetition of the *Miranda* warnings would not overcome the presumption of coercion that is created by prolonged police custody." (Supra, 486 U.S. 675, 686.)

Then, in Roberson, this Court concluded by saying, "[f]inally, we attach no significance to the fact that the officer who conducted the second interrogation did not know that [the defendant] had made a request for counsel. In addition to the fact that [the] Edwards [case] focuses on the state of mind of the suspect and not of the police, custodial interrogation must be conducted pursuant to established procedures, and those procedures in turn must enable an officer who proposes to initiate an interrogation to determine whether the suspect has previously requested counsel. . . . Whether a contemplated reinterrogation concerns the same or a different offense, or whether the same or different law enforcement authorities are involved in the second investigation, the same need to determine whether the suspect has requested counsel exists. The police department's failure to honor that request cannot be justified by the lack of diligence of a particular officer." (Supra, 486 U.S. 675, 687-688.)

The instant case appears to be one where petitioner was more in need of the Miranda protections than the defendant in the Roberson case just quoted above, since (1) the second

investigation in this case pertained to the whereabouts and the conditions of Shaun and Delylah, who were siblings of Jane Doe, who both had reportedly suffered traumatic injuries similar to those sustained by Jane Doe, (2) where there was a deliberate decision not to readvise petitioner of his Miranda rights when he was later questioned at the Butte County juvenile detention facility about the whereabouts and the conditions of Shaun and Delylah. Plus, and (3) when petitioner asked to talk to an attorney when he was at the Butte County juvenile facility that request was totally ignored.

Accordingly, it is abundantly clear that the trial court was correct in concluding that there were Miranda violations both at the apartment in Quincy and at the juvenile facility in Butte County.

2. The "Inevitable Discovery Rule" is Inapplicable to This Case:

In this case it is clear that both the Court of Appeal in its opinion, and the trial court in its ruling, failed to follow well established pre-existing appellate precedent that makes the inevitable discovery rule totally inapplicable to this case. (See Appendix "A" pages 5-8.) As result of this failure by the Court of Appeal the appellate opinion issued by that court in this case conflicts with that pre-existing established appellate precedent, including an opinion from this Court.

The application of the concept of "inevitable discovery" in the context of the police discovering the location and the condition of a victim's body as a result of an unlawful interrogation of a defendant was fully considered and discussed by this Court in the case of Nix v. Williams, 467 U.S. 431 (1984). In Nix, this Court held that the inevitable discovery doctrine permitted the introduction of evidence about the discovery and condition of a murder victim's body that had been obtained through interrogation in violation of the defendant's right to counsel because the evidence in question would inevitably have been discovered without reference to the police error or misconduct. (Nix, supra, 467 U.S. at p. 448.) Although the defendant's incriminating statements could not be introduced against him at trial (id. at p. 437), this Court ruled that evidence of the

location and condition of the body was admissible under the inevitable discovery doctrine because until the defendant led the police to the body, a 200-volunteer search party was methodically canvassing two counties, looking specifically on roads, in ditches, and in culverts, and was only two and one-half miles away from the body and three to five more hours of searching from reaching the culvert where the body was found. (Id. at pp. 448–450.) The search was suspended only because the defendant led the police to the body's location. (Id. at p. 449.) Based on the detailed historical facts presented about the method and progress of that search, this Court stated that the record ". . . was clear that the search parties were approaching the actual location of the body, and we are satisfied, along with three courts earlier, that the volunteer search teams would have resumed the search had [the defendant] not earlier led the police to the body and the body inevitably would have been found." (Id. at pp. 449–450.)

In other words, in order to justify application of the inevitable discovery exception, the prosecution must demonstrate by a preponderance of the evidence that, due to a separate line of investigation, application of routine police procedures, or some other circumstance, the evidence in question would have been discovered by lawful means. The showing must be based not on speculation but on "demonstrated historical facts capable of ready verification or impeachment." (Nix v. Williams, supra, 467 U.S. 431, 444-445, fn. 5.)

The inevitable discovery exception requires a court "'to determine, viewing affairs as they existed at the instant before the unlawful [act], what would have happened had the unlawful [act] never occurred.'" (U.S. v. Cabassa, 62 F.3d 470, 473 (2d Cir. 1995).) For example, in Nix, police officers discovered the location and condition of the victim's body through an unlawful interrogation of the defendant, but the court concluded that a simultaneous independent search would have inevitably led to discovery of the evidence. (Nix, supra, 467 U.S. at pp. 449–450.)

Additionally, as explained in the case of People v. Superior Court (Corbett), 8 Cal.App.5th 670, 682 (2017), "[t]he inevitable discovery doctrine, recognized by the Supreme Court in Nix, supra, 467 U.S. 431, is 'closely related' to the independent source doctrine. (Id. at p. 443.) It is 'in reality an extrapolation from the independent source doctrine: *Since* the tainted evidence would be admissible if in fact discovered through an independent source, it should be admissible if it inevitably would have been discovered.' (Murray [v. United States (1988) 487 U.S. 533, 539 [101 L.Ed.2d 472]].) The Supreme Court has described the test as follows: 'If the prosecution can establish by a preponderance of the evidence that the information ultimately or inevitably would have been discovered by lawful means . . . the evidence should be received.' (Nix, at p. 444.) The prosecution must establish inevitable discovery without resort to speculation, for 'inevitable discovery involves no speculative elements but focuses on demonstrated historical facts capable of ready verification or impeachment.'(Id. at p. 444, fn. 5.)"

The instant case is not at all a case such as Nix v. Williams, supra, 467 U.S. 431, in which the use of **legitimate** investigatory and **simultaneous** tactics had brought the police to the **brink** of discovering the evidence in issue (i.e., the bodies of the two deceased children) when the misconduct occurred (i.e., illegally obtaining the statement of the defendant as to the location of the two bodies), such that a court could say that the evidence would inevitably have been discovered in the absence of that misconduct.

In this case it is undisputed that the police were not even close to, much less on the brink of, simultaneously discovering the evidence in issue (i.e., the bodies of Shaun and Delylah) when the misconduct occurred in using a series of ploys to get petitioner to make statements disclosing the location and conditions of Shaun and Delylah in violation of his right to counsel as discussed hereinabove.

The illegal interrogation of petitioner at the Butte County juvenile hall started at about 4:30 P.M., on December 13, 2015, and ended several hours later. (3RT 651-652, 660-662, 776-777.)

The police went to the storage unit in Redding, without a search warrant, and found the deceased bodies of the two young children at about 9:00 P.M., on December 13, 2015, only because of what petitioner earlier had said during the illegal interrogation at the Butte County juvenile hall. Absent petitioner's illegally obtained statements there was no way that the authorities at that time were simultaneously doing something that showed that they were on the brink of discovering the bodies of the two deceased children. (1CT 155; 3RT 676-688, 714-716.)

The search warrant for Huntsman's vehicle, where the police ultimately found the paperwork pertaining the storage unit, was not even issued until two days later, at 8:30 A.M., on December 15, 2015. (1CT 161-174.)

This is clearly not a case where there was a simultaneous independent legal search that would have inevitably led to the discovery of the deceased bodies of the two young children in question. Nor, as just noted hereinabove, absent petitioner's illegally obtained statements there was no way that the authorities were at any way on the brink of discovering the bodies of the two deceased children. Accordingly, contrary to the opinion of the California Court Appeal in this case, there was no legal basis for the application of the inevitable discovery rule to this case.

3. <u>The Obtaining of the Subsequent Search Warrants is Irrelevant</u>:

Next, the theory of the California Court of Appeal in this case for the application of the inevitable discovery rule is clearly erroneous. (See Appendix "A", pages 5-8.) The substance behind that erroneous conclusion by that appellate court is as follows: Despite unlawfully obtaining the statements from petitioner as to the location of the bodies, and conducting a search and seizure based upon those statements where that search was conducted first without a search warrant, and then hours

later with a search warrant, nevertheless the bodies of the two deceased children inevitably would have been found by (1) ultimately obtaining a search warrant for Huntsman's vehicle, (2) at which time the police would have located the paperwork pertaining to the storage unit in question, (3) then with that information the police would have obtained another search warrant for the storage unit, and (4) the police ultimately would have found the bodies in the storage unit. This hypothetical reasoning impermissibly depends upon too many hypothetical assumptions.

Specifically, (1) if the warrantless entry into storage unit #32 at the Enterprise Stor-All storage facility in Redding, California, at about 9:00 P.M., on December 13, 2015, had never occurred, (2) if the subsequent search warrant for that same storage unit that was issued at about 4:06 A.M., on December 14, 2015, and which was executed shortly after it was issued also had never occurred, and (3) if the issuance of the subsequent search warrant for, among other things, Huntsman's blue Toyota 4-Runner, all of which were the product of the illegally obtained statements from petitioner as to the location of the two missing children had never occurred, nevertheless, absent all three of those hypothetical assumptions, a hypothetical search warrant affidavit could have been prepared and presented to some unnamed magistrate for a search warrant for Huntsman's blue Toyota 4 Runner, where the affidavit in support of that hypothetical search warrant would *not* have contained any information related to the statements made by petitioner, as a result of which the authorities hypothetically could have executed such a search warrant at some unspecified date and time in the future and found in Huntsman's blue Toyota 4-Runner the copy of the Enterprise Stor-All lease agreement signed by Huntsman on December 4, 2015, renting unit #32 at that storage facility, and as a result thereof the authorities at some unspecified date and time in the future hypothetically could have sought, and hypothetically obtained, a search warrant for unit #32 at the Enterprise Stor-All storage facility in Redding, California, for Shaun and Delylah and then found those bodies.

It does not appear that any appellate court, much less this Court, has ever extended the inevitable discovery rule that far based upon a hypothetical act that is based upon another hypothetical act that is based upon still another hypothetical act all of which is related to an alleged hypothetical search warrant that was never sought.

The closet that any justice on this Court has come in forthrightly addressing this issue is Justice Breyer who clearly explained in a dissenting opinion in the case of Hudson v. Michigan, 547 U.S. 586, 616-617 (2006) that the inevitable discovery rule ". . . does not refer to discovery that would have taken place if the police behavior in question had (contrary to fact) been lawful. The doctrine does not treat as critical what *hypothetically* could have happened had the police acted lawfully in the first place. Rather, 'independent' or 'inevitable' discovery refers to discovery that did occur or that would have occurred (1) despite (not simply *in the absence of*) the unlawful behavior and (2) *independently* of that unlawful behavior. The government cannot, for example, avoid suppression of evidence seized without a warrant (or pursuant to a defective warrant) simply by showing that it could have obtained a valid warrant had it sought one." (Italics in original.) (Hudson v. Michigan, supra, 547 U.S. 586, 616-617.)

In other words, as one appellate court in the State of California said, after acknowledging the above quoted language by Justice Breyer in the Hudson case, the concept that ". . . illegally seized evidence should not be excluded because the police *theoretically* could have obtained a warrant" is to be rejected. (Italics in original.) (People v. Superior Court (Walker), 143 Cal.App.4th 1183, 1215 (2006).)

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CONCLUSION

For all of above discussed reasons in this petition for writ certiorari, petitioner Gonzalo Curiel respectfully requests this Court to grant this petition for writ of certiorari.

Respectfully submitted,

Dated: March 27, 2021

ARTHUR DUDLEY
Attorney for Petitioner

APPENDIX "A"

Filed 10/20/20 P. v. Curiel CA6

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. GONZALO CURIEL, Defendant and Appellant.	H046009 (Monterey County Super. Ct. No. SS152108B)

Gonzalo Curiel was convicted by jury trial of first degree murder (counts 1 and 2; Penal Code, § 187, subd. (a)),[1] child abuse (count 3; § 273a, subd. (a)), and torture (counts 4-6; § 206). As to the murder counts, the jury found true torture (§ 190.2, subd. (a)(18)) and multiple murder (§ 190.2, subd. (a)(3)) special circumstances. For count 3, the jury also found true an allegation that Curiel personally inflicted great bodily injury (§ 12022.7, subd. (a)). The trial court sentenced Curiel to life without the possibility of parole for both murder convictions, consecutive to a term of life with the possibility of parole for one of the torture convictions. The court imposed and stayed additional sentences for the remaining convictions and allegations.

The sole issue on appeal is whether the trial court erred when it denied Curiel's motion to suppress evidence under section 1538.5. We conclude that the trial court did not err, and affirm the judgment.

[1] Subsequent statutory references are to the Penal Code unless otherwise specified.

I. BACKGROUND

In March 2014, Tami Huntsman agreed to take care of two nieces, Jane Doe (age eight) and D.T. (age two), and her nephew S.T. (age five). The three children lived with Huntsman in an apartment in Salinas. Also living at the apartment at the time were Huntsman's husband, her teenage son, and her 10-year old twins. Curiel, who was then 16 years old, became friends with Huntsman's teenage son. Curiel began to regularly stay at Huntsman's apartment. Curiel and Huntsman soon became romantically involved. Huntsman's husband moved out, and Huntsman's son was sent to Juvenile Hall. Curiel started sleeping with Huntsman in the master bedroom.

Curiel and Huntsman began to severely abuse Jane Doe, D.T., and S.T. The abuse included beating the children, keeping them in a cold bathroom with no clothes, spraying them with water, forcing them to sit in wet clothes, withholding food, and zip tying their hands together behind their backs or to the bed.

After Thanksgiving 2015, Curiel and Huntsman abruptly packed up some belongings and drove to northern California. Huntsman's children and Jane Doe were passengers in the vehicle; D.T. and S.T. were not. When Jane Doe asked Huntsman where D.T and S.T. were, Huntsman said she had put them up for adoption. During the drive, there was a "bad" smell coming from a storage bin in the back of the vehicle.

While in northern California, Huntsman rented a storage unit in Redding. At the storage unit, Curiel and Huntsman took items out of the vehicle, including the plastic storage bins, and put them into the storage unit. Thereafter, the "bad" smell in the vehicle dissipated.

Huntsman and Curiel eventually arrived in the small northern California town of Quincy, which is near Redding, where Huntsman attempted to establish a residence. While there, a friend of Huntsman's called Child Protective Services (CPS) because Jane Doe was extremely thin and bruised. CPS and a sheriff's deputy responded. Inside of Huntsman's vehicle, they discovered Jane Doe was badly bruised, scarred, severely

malnourished, and she appeared to have a broken collar bone and broken finger. After being given *Miranda*[2] advisements, Curiel admitted some culpability in causing the injuries to Jane Doe. Curiel eventually stated he wanted a lawyer present, the interview was terminated, and he and Huntsman were arrested. Huntsman was taken to jail and Curiel was taken to a juvenile detention facility in Butte County.

Later, Huntsman's mother phoned the sheriff's department to inquire about S.T.'s and D.T.'s whereabouts. The detective with whom she spoke said he had no knowledge of those children. Huntsman's mother urged the detective to find them, and she expressed concern the children were dead. The detective began an immediate and urgent effort to try to find S.T. and D.T. A sheriff's deputy questioned Huntsman, who stated that "some agency" had taken custody of the children. Feeling that the investigation had reached an impasse, and worried that the weather in Quincy was very cold, the deputy called the juvenile detention center where Curiel was being held "to have somebody talk to . . . Curiel and see if he knew where the children were." The deputy spoke with the juvenile detention center supervisor and instructed him to "ask about the kids, don't ask any other questions about the case."

The juvenile detention center supervisor and an assistant interviewed Curiel in the visitation room at the facility. They did not provide him with advisements under *Miranda*. During the interview, the questioning focused solely on the location of S.T. and D.T. At one point, Curiel laid his head down and acted like he was trying to sleep. The supervisor kicked the leg of the table. The juvenile detention center supervisor and his assistant stated that they spoke calmly to Curiel, without accusing him of wrongdoing or threatening him. Curiel initially claimed he did not know the location of S.T. and D.T. Curiel eventually stated that the children were in a storage unit in Redding, and gave a detailed description of its location.

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

Law enforcement arrived at the Redding storage facility without a search warrant. The assistant manager, who was on-site, received a call from the facility's owner stating that the police were looking for her. The assistant manager then discovered officers "scaling the rock wall" to enter the facility. The assistant manager took police to Huntsman's storage unit. They immediately went inside because "it was a lifesaving effort at [that] time," and they still "had some hope that the children were still alive." Inside of the storage unit, officers found D.T.'s and S.T.'s bodies in a plastic storage container. They immediately stepped out, secured the scene, and obtained a search warrant. Four days after the bodies were discovered, Huntsman's vehicle was searched by the Salinas Police Department, having been retrieved from the Redding Police Department.[3] Inside of the driver's side door pocket, they found a receipt for a storage unit in Redding, a business card with information about the storage unit, and the storage unit lease agreement. The business card reflected the name of the facility, its address, the storage unit number, and the monthly payment due.

Prior to trial, Curiel moved under section 1538.5 to suppress the evidence obtained from the storage unit, including the bodies of D.T. and S.T. Curiel argued that the bodies had been discovered after Curiel's *Miranda* rights had been violated, and thus suppression of the physical evidence derived from that violation was warranted. The trial court denied the section 1538.5 motion. The court specifically found that Curiel had been advised of his *Miranda* rights during the initial questioning in Quincy regarding the CPS investigation into Jane Doe's injuries, that he affirmatively indicated he wanted to speak to an attorney, and "[t]hat request was honored." The court then noted that Huntsman's mother had expressed "grave concerns about [D.T.'s and S.T.'s] health and safety,"

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[3] The search of the vehicle was delayed because of uncertainty over which agency had jurisdiction over the case. While the vehicle was recovered in Plumas County by the Redding Police Department, it was determined that the children likely had died in Salinas, and so the investigation, including the vehicle, was handed over to the Salinas Police Department. It was "always intended" that the vehicle would be searched.

which led to a "relentless" effort "to locate the children." The court then noted that inside Huntsman's vehicle there was "a rental receipt from the storage facility in Redding that contained the deceased children." Accordingly, the court determined that "the location and discovery of the children in the storage facility was inevitable" based on the effort and resources that had already been deployed towards finding the children.

II. DISCUSSION

Curiel argues that his rights under *Miranda* and *Edwards*[4] were violated when he was questioned at the juvenile detention facility after he had previously invoked his right to counsel. He contends that "all evidence of the finding of the bodies of" S.T. and D.T. "should have been suppressed" as a result of the *Miranda* violation, and that the error was prejudicial because there would otherwise have been "no evidence to support [Curiel's] two murder convictions pertaining to those two children."

A. *Standard of Review*

The Fourth Amendment to the United States Constitution requires state and federal courts to exclude evidence from unreasonable searches and seizures. (*People v. Williams* (1999) 20 Cal.4th 119, 125.) Section 1538.5 allows a defendant to move to suppress evidence obtained in an improper seizure. Our standard of review is well established. "In reviewing a trial court's ruling on a motion to suppress, we defer to the trial court's factual findings, express or implied, where supported by substantial evidence. [Citation.] And in determining whether, on the facts so found, the search was reasonable for purposes of the Fourth Amendment to the United States Constitution, we exercise our independent judgment." (*People v. Simon* (2016) 1 Cal.5th 98, 120.)

B. *Inevitable Discovery*

"Evidence need not be suppressed if the prosecution can establish by a preponderance of the evidence that the information would inevitably have been

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[4] *Edwards v. Arizona* (1981) 451 U.S. 477, 482 (*Edwards*).

discovered by lawful means." (*People v. Carpenter* (1999) 21 Cal.4th 1016, 1040 (*Carpenter*).) More specifically, the prosecution "must demonstrate by a preponderance of the evidence that, due to a separate line of investigation, application of routine police procedures, or some other circumstance, the [unlawfully obtained evidence] would have been discovered by lawful means." (*People v. Hughston* (2008) 168 Cal.App.4th 1062, 1072.) "[T]he doctrine 'is in reality an extrapolation from the independent source doctrine: Since the tainted evidence would be admissible if in fact discovered through an independent source, it should be admissible if it inevitably would have been discovered.' [Citation]" (*People v. Robles* (2000) 23 Cal.4th 789, 800.) "As this is essentially a question of fact, we must uphold the trial court's determination if supported by substantial evidence." (*Carpenter*, at p. 1040.)

In this case, the trial court impliedly found, or at the very least assumed, that the interview at the juvenile detention facility constituted a *Miranda* violation.[5] However, the court explicitly found that the prosecution had established that the bodies of D.T. and S.T. would inevitably have been discovered by lawful means. This finding was supported by substantial evidence. At the time that Curiel was questioned, he had been arrested for the extremely serious abuse of Jane Doe. Jane Doe had been found emaciated, bruised, and with apparent broken bones in Huntsman's vehicle. Although the vehicle was not immediately searched, it was in police custody and there was no question it would be searched. Police soon learned that two other young children, D.T. and S.T., were missing and that Huntsman's mother suspected they were in serious danger. As a result, police had undertaken an extensive search. Inside of Huntsman's impounded vehicle were documents that would have led authorities directly to the storage unit in Redding, which police undoubtedly would have searched after learning of its

[5] For purposes of our analysis, we need not determine whether a *Miranda* violation occurred.

existence. In short, substantial evidence supports the trial court's finding that the bodies would inevitably have been discovered as a result of an ongoing police investigation.

Curiel suggests there is a possibility that either he or Huntsman might have been released from custody and might have been able to remove the bodies from the storage facility. We find this implausible. In assessing whether evidence inevitably would have been discovered, a reviewing court should " ' "not leave its common sense at the door." ' " (*People v. Cervantes* (2017) 11 Cal.App.5th 860, 872.) In this case, Huntsman and Curiel were being held on very serious child endangerment charges. Based on the call from Huntsman's mother, police had initiated an all-out search to find D.T. and S.T., with suspicion focusing directly on Curiel and Huntsman. It is unlikely that either of them would have been released before the vehicle was searched. It is inconceivable, given that two children were missing, that either of them would have been allowed to travel without police surveillance to Redding. Put simply, neither Curiel nor Huntsman was in any conceivable position to remove the bodies from the storage facility before their inevitable discovery.

At oral argument, Curiel's appellate counsel relied heavily on this court's opinion in *People v. Superior Court (Walker)* (2006) 143 Cal.App.4th 1183 [*Walker*], to argue that "theoretical" or "hypothetical" suppositions of what police might have done cannot support the application of the inevitable discovery doctrine. In *Walker*, this court rejected "any assertion that the inevitable discovery doctrine applies . . . simply because the police had sufficient probable cause to obtain a warrant" and *theoretically* could have obtained one. (*Id.* at p. 1215.) The court stated that the doctrine must only be applied when "the record supports a finding that the contraband would have been inevitably discovered." (*Id.* at p. 1216.) The *Walker* court then found the application of the inevitable discovery doctrine appropriate where campus safety officers facilitated the seizure of contraband from a dorm room by police officers who did not first obtain a search warrant or lawful consent. The court concluded the administration would have involved the police in any

event as the safety officers had contacted the police, gathered the marijuana and cash for inspection, and displayed it to them. "The probability that the University would have involved the police further is heightened by the fact that the safety officers' investigation had disclosed a potentially significant marijuana sales enterprise on the University campus" that would not have been addressed as an internal campus rules violation. (*Id.* at pp. 1216-1217.)

We do not deviate from the analysis in *Walker* here. The trial court did not rely on, and we do not adopt, any hypothetical or theoretical argument that the police had sufficient probable cause to obtain a search warrant for the storage unit. Instead, consistent with *Walker*, we conclude that the record supports a finding that the children's bodies would have been discovered as a result of the ongoing and focused police investigation of the abuse of Jane Doe and the high probability of the discovery of storage unit documents in Huntsman's impounded vehicle. The officers investigating the abuse of Jane Doe were further mobilized by the urgent need to find the two younger children who were reported missing and in danger soon after Huntsman and Curiel were arrested for child endangerment. On these facts, the trial court correctly concluded the discovery of the connection between Huntsman and the storage unit by law enforcement was inevitable.

On this basis alone, even assuming a *Miranda* violation, the trial court did not err in denying Curiel's motion to suppress.[6]

III. DISPOSITION

The judgment is affirmed.

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[6] The Attorney General argues that there are additional bases for affirming the judgment: Curiel cannot suppress physical evidence seized as a result of a noncoercive *Miranda* violation; he had no reasonable expectation of privacy in the storage unit; and the questioning was permissible under the rescue doctrine. Because the trial court's application of the inevitable discovery doctrine was supported by substantial evidence, we do not address these arguments.

Greenwood, P.J.

WE CONCUR:

Grover, J.

Danner, J.

The People v. Curiel
No. H046009

APPENDIX "B"

Court of Appeal, Sixth Appellate District - No. H046009

S265711

IN THE SUPREME COURT OF CALIFORNIA

En Banc

THE PEOPLE, Plaintiff and Respondent,

v.

GONZALO CURIEL, Defendant and Appellant.

The petition for review is denied.

CANTIL-SAKAUYE

Chief Justice