SUPREME COURT, STATE OF COLORADO 101 West Colfax Avenue, Suite 800 Denver, Colorado 80202	FILED IN THE SUPREME COURT APR 16 2012 OF THE STATE OF COLORADO Christopher T. Ryan, Clerk
Certiorari to the Colorado Court of Appeals Case No. 08CA630	
RICARDO JAIME SANCHEZ Petitioner v. THE PEOPLE OF THE STATE OF COLORADO Respondent	σ COURT USE ONLY σ
Douglas K. Wilson, Colorado State Public Defender JOSEPH P. HOUGH, #34384 1290 Broadway, Suite 900 Denver, CO 80203 Appellate.pubdef@coloradodefenders.us (303) 764-1400 (Telephone)	Case Number: 11SC215

OPENING BRIEF

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with C.A.R. 28(g).

☑ It contains 4,065 words.

The brief complies with C.A.R. 28(k).

☑ For the party raising the issue:

It contains under a separate heading (1) a concise statement of the applicable standard of appellate review with citation to authority; and (2) a citation to the precise location in the record (R.______, p._____), not to an entire document, where the issue was raised and ruled on, if the issue involves (i) admission or exclusion of evidence, (ii) giving or refusing to give a jury instruction, or (iii) any other act or ruling for which the party seeking relief must record an objection or perform some other act to preserve appellate review.

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It contains, under a separate heading, a statement of whether such party agrees with the opponent's statements concerning the standard of review and preservation for appeal, and if not, why not.

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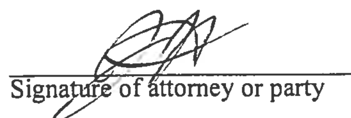

Signature of attorney or party

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ISSUE ANNOUNCED BY THE COURT

Whether the court of appeals erred by affirming the trial court's denial of Petitioner's motion to suppress his incriminating statements, and, if so, whether the error was harmless beyond a reasonable doubt.

Whether the court of appeals erred in relying on the "three precepts" rule set forth in *People v. Al-Yousif*, 49 P.3d 1165 (Colo. 2002), to afford less weight to the advisement that an attorney will be appointed free of charge if the suspect is indigent.

STATEMENT OF THE CASE

Ricardo Sanchez was charged with the first degree murder, with intent and after deliberation, of Gustavo Guzman-Ramirez, a class one felony, in violation of §18-3-102(1)(a), C.R.S. (2006).(v.1,p21) Sanchez pleaded not guilty, tried his case to a jury, was found guilty of the charge and thereafter, sentenced to life in prison without the possibility of parole.(CD,2-8-08,p155-65)

On February 10, 2011, in an unpublished opinion, a two-judge majority panel of the court of appeals affirmed Sanchez's conviction. However, one judge on the panel, Fox, dissented in part and would have found that the "prosecution did not carry its burden of proof to show that defendant's *Miranda* waiver was made 'knowingly and intelligently."(Slip Op. p.22)

On November 14, 2011, this Court granted Sanchez's petition for writ of certiorari, primarily to determine whether the court of appeals erred in affirming the trial court's denial of the defendant's motion to suppress his statements.

GENERAL STATEMENT OF THE FACTS

It was undisputed that on the morning of September 20, 2006, Ricardo Sanchez arrived at his place of employment, a construction site, and shot his co-worker, Gustavo Guzman-Ramirez, numerous times in the body and head, killing him at the scene.

During trial, the prosecution introduced evidence and testimony in advancement of its theory that Sanchez had not, contrary to the defense's argument, killed Guzman-Ramirez in self-defense or as a consequence of the medication the defendant recently began taking to treat his seizure disorder. Rather, urged the prosecution, Sanchez murdered Guzman-Ramirez after substantial planning and deliberation because he was enraged by the victim's continuous and repeated insults and taunting of him.

In support of its contention, the prosecution introduced the following facts: (1) Just prior to the shooting, Sanchez withdrew and gave his wife a substantial amount of money, wished her goodbye, and told her that he loved her and his children.(CD,2-6-08,p48-50); (2) Immediately before the shooting, the defendant

told his brother that he was "tired of this life."(CD,2-6-08,p15); (3) During the shooting, Sanchez supposedly said something to the effect of "nobody makes fun of" and/or "don't mess with" him—as the victim apparently had a long history of teasing and taunting the defendant.(CD,2-6-08.,p124,p143-60); (4) Sanchez reloaded the revolver twice while shooting the victim.(CD,2-6-08,p142); (5) Finally, in an interview with police, the defendant admitted to purchasing the gun and bullets just prior to and for the purpose of shooting Guzman-Ramirez.(CD,2-7-08,p235-58)

The defense countered that Sanchez did not seek out an altercation with the victim, but rather continually pleaded with Guzman-Ramirez to simply stop harassing and threatening him.(CD,2-7-08,p274-77) However, the day before the shooting, Guzman-Ramirez told Sanchez that he was going to kill him the following day and rape the defendant's wife.(CD,2-7-08,p232-33,p277-79) Fearing the legitimacy of the victim's violent threats against him and his family, Sanchez became, in his own words, "desperate," his "head was spinning," and he truly believed that Guzman-Ramirez would be armed the following day at work.(CD,2-7-08,p234,p280-82)

On the subsequent morning, at their work site, Sanchez approached Guzman-Ramirez and the victim took two steps towards the defendant saying,

"Fuck your mother."(CD,2-7-08,p287) Feeling threatened, the defendant retrieved a revolver from his waistband and fired upon the victim, killing him on the scene.(CD,2-7-08,p237-40,p258,p287-290)

In addition to arguing that Sanchez shot and killed Guzman-Ramirez in response to the victim's deadly threats, and in defense of himself and his family, the defendant also elicited evidence that a change in Sanchez's seizure medication, prior to the shooting, substantially influenced and disturbed his mental state and consequent actions against the victim.(CD,2-5-08,p196-98)

According to the defendant's wife, Maria Rojas, approximately two months before the shooting, Sanchez's doctor prescribed him a new seizure medication, "Topamax", which he began taking *in addition to* his former one.(CD,2-6-08,p75-76) After taking the prescription drug cocktail, Rojas, who had been married to the defendant for approximately eight years and had three small children with him, noticed a disturbing change in her husband's demeanor.(CD,2-6-08,p76-77) Sanchez, who never ingested anything other than what he was prescribed to him (including illicit drugs or alcohol), began to behave strangely, he was "quieter, distracted" sad, depressed and forgetful—often asking Rojas the same questions within a short timeframe.(CD,2-6-08,p76-79)

Furthermore, Rojas indicated that her husband began taking the two medications together after his seizures became more frequent and severe.(CD,2-6-08,p79) Additionally, the defendant's younger brother and co-worker, Ramon Sanchez (who was, as Rojas, also called as a witness by the prosecution) testified that he knew his brother to be a hard worker and loving family man, but he was plagued with and very ill due to his severe seizure disorder.(CD,2-6-08,p27-29,p36-37)

Additional facts, concerning the specifics of the legal issue presented, will be provided below where appropriate.

SUMMARY OF THE ARGUMENT

The court of appeals misconstrued the "three precepts" rule as set forth in *People v. Al-Yousif*, 49 P.3d 1165 (Colo. 2002) because insuring that a suspect understands that an attorney will be appointed *free* of charge, if the suspect cannot afford but desires one, is a critical part of a valid *Miranda* advisement. Furthermore, the trial court reversibly erred in failing to grant the defendant's motion to suppress because the defendant's highly incriminating and prejudicial statements were not made pursuant to a "knowing and intelligent" waiver of rights and clearly "contribute[d] to the verdict."

ARGUMENT

THE TRIAL COURT REVERSIBLY ERRED BY FAILING TO GRANT THE DEFENDANT'S MOTION TO SUPPRESS HIS HIGHLY INCRIMINATING STATEMENTS.

A. Standard of Review

In reviewing a defendant's motion to suppress his statements, appellate courts defer to the district court's findings of fact (if supported by competent evidence in the record), but review the legal effect of those facts *de novo*. *See People v. Bostic*, 148 P.3d 250 (Colo. App. 2006). However, "appellate courts have an enhanced role in examining a trial court's application of law to fact, particularly in the arena of constitutional rights." *People v. Al-Yousif*, 49 P.3d 1165, 1169 (Colo. 2002).

Here, the defense moved to suppress Mr. Sanchez's incriminating statements, obtained during a lengthy interrogation, because they were gathered in violation of *Miranda v. Arizona*, 384 U.S. 436 (1966).(v.1,p44-45;CD,4-16-07,p117-25;CD,5-25-07,p6) However, the trial court's failure to suppress the defendant's statements constituted an error of "constitutional dimension" and as such, reversal is required because the State cannot prove that the error was harmless beyond a reasonable doubt.(CD,5-25-07,p6-14) *See, e.g., Griego v.*

People, 19 P.3d 1, 4 (Colo. 2001) (constitutional errors subject to harmless beyond a reasonable doubt standard).

B. <u>Statement of the Facts</u>

Prior to trial, the defense filed a motion to suppress Sanchez's interview with officers conducted shortly after the defendant was arrested.(v.1,p44-45) Specifically, argued the defense, Sanchez's statements were obtained without an adequate advisement of his *Miranda* rights and particular, his right to be assisted by defense counsel.(v.1,p44-45)

A hearing was subsequently held on the motion and New Mexico State Police Sergeant Miguel Mendez explained that after Sanchez was arrested and in custody, he conducted an extensive audio and video-taped interview with the defendant (in Spanish as the defendant spoke no English) at the police station.(CD,4-16-07,p117-25)

According to Sergeant Mendez, at the beginning of the interview, Sanchez was advised that he had a right to remain silent, that anything he said could be used against him in court, the he had the right to "consult with an attorney to be counseled or be given advice before" any questions were asked of him, and could stop the interview anytime or when he had an attorney.(CD,4-16-07,p132-33) Concerning those rights, Sanchez asked, "It is not very necessary a lawyer because

the lawyer is going to want money, true? Decide a lawyer, because the lawyer is going to want money, true?"(CD,4-16-07,p145;v.4,People'sExh.61,p1380[1])

In response, Mendez advised the defendant, "Well the thing is yes, yes they are, if you don't have the means of hiring a lawyer one would be assigned, but the things, where we are, we are going to talk soon."(CD,4-16-07,p146;v.4,People'sExh.61,p1380) Sanchez replied, "It is better like this, true?" and Mendez stated, "We I do not say what is better. If you are ready, I..."(CD,4-16-07,p148) Finally, Sanchez stated, "Sure, why go around it, true, if finally, what was done, was done." Thereafter, the defendant purportedly gave a lengthy and incriminating interview to Mendez.(CD,4-16-07,p148)

At the suppression hearing, Sergeant Mendez conceded (on cross-examination) that he never informed Sanchez that any attorney that might be assigned to represent him would *also* be free of charge to the defendant.(CD,4-16-07,p147) Furthermore, according to Mendez, at no point during the interview, was the defendant ever advised that he would not have to pay for a lawyer's counsel or other services.(CD,4-16-07,p48-49)

At the conclusion of the hearing on the motion to suppress, defense counsel argued that prior to being interviewed, Sanchez was arrested, placed in handcuffs,

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[1] For this Court's convenience, page 1380 of People's Exhibit 61, the applicable portion of the transcribed interview with the defendant, is attached as an appendix.

and was taken to the New Mexico State Police Department headquarters and was therefore, clearly in custody.(CD,4-16-07,p259-60) However, despite Mendez's consequent obligation to fully advise the defendant of his *Miranda* rights, Mendez neglected to inform Sanchez, who was obviously and primarily concerned about being unable to afford an attorney, of his right to consult with a lawyer *for free*, before speaking to officers.(CD,4-16-07,p262-65)

Additionally, argued the defense, the fact that Sanchez was clearly ignorant of the inner-workings of the criminal justice system, including the rights available to him as a defendant (as he was an uneducated, Spanish-speaking immigrant with no previous experiences with the police), only heightened the need by officers to ensure he fully understood he could consult with a lawyer free of charge.(CD,4-16-07,p282-88)

After taking the matter under advisement, the trial court denied the defendant's motion to suppress his statements finding that Sanchez's inquiry concerning the cost of hiring an attorney was adequately addressed by Mendez's *Miranda* advisement.(CD,5-25-07,p6) The court further stated that it would not "presume" that Sanchez failed to understand that, if requested, a lawyer would be provided to him free of charge.(CD,5-25-07,p6)

Subsequently, at trial, not only was Sanchez's interview with Mendez introduced by the prosecution against the defendant, but the defendant's statements to police comprised a major component of the prosecution's argument against him, demonstrating the defendant's murderous intent and deliberation.(CD,2-5-08,p182-96;CD,2-8-08,p91-120,p134-50)

C. Law and Analysis

In *Miranda v. Arizona*, 384 U.S. 436 (1966), the United States Supreme Court set forth a number of procedural safeguards designed to protect the rights of the criminally accused, including the Fifth Amendment's right against self-incrimination. In sum, the *Miranda* Court held that when a defendant is subject to custodial interrogation by the police, officers must administer an advisement to the defendant regarding his rights prior to questioning. *Id* at 467; *See also People v. Kaiser*, 32 P.3d 480, 483 (Colo. 2001).

Concerning the specific contents of the advisement, "officers must inform the accused that he or she has the right to remain silent; that if the accused waives this right, anything he or she says may be used against him or her; that he or she has the right to have an attorney present; and that an attorney will be appointed *if the accused cannot afford one*." *People v. Redgebol*, 184 P.3d 86, 93 (Colo. 2008) (emphasis added); *See also Miranda*, *supra* at 444 ("[T]her person must be warned

that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, *either retained or appointed*.") (emphasis added). Consequently, "[i]f police fail to make this advisement prior to questioning, the court must exclude the defendant's statements from evidence in the prosecution's case," but when a defendant has been "properly and timely informed of his *Miranda* rights," he may waive them and speak to the police. *Kaiser*, *supra* at 483-84.

The validity of the defendant's waiver of his *Miranda* rights involves a two-part inquiry: (1) whether the waiver was voluntary, "in the sense that was the product of a free and deliberate choice rather than [obtained by] intimidation, coercion, or deception;" and (2) whether the waiver was made "knowingly and intelligently." *Colorado v. Spring*, 479 U.S. 564, 573 (1987); *See People v. Jiminez*, 863 P.2d 981, 984 (Colo. 1993).

Furthermore, the prosecution bears the burden of proving, by a preponderance of the evidence, that the defendant's waiver was "knowing and intelligent." *People v. Jiminez*, 863 P.2d 981, 984 (Colo. 1993). This determination, in turn, requires a finding that the defendant was "fully aware of the nature of the right to remain silent...and the consequences of abandoning that right." *Id.* at 984; *See also Moran v. Burbine*, 475 U.S. 412, 421 (1986) (waiver

must be "made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.").

In assessing the validity of the purported waiver, "the totality of the circumstances surrounding the interrogation" must be considered to ensure that the accused evinced a "requisite level of comprehension." *Moran v. Burbine*, *supra* at 421. This analysis "includes any language or comprehension barriers encountered by the defendant during the advisement and interrogation." *People v. Redgebol*, *supra* at 93; *See also People v. Kaiser*, *supra* at 484 (factors to be considered include "whether the defendant or the interrogating officer initiated the interview; whether and to what extend the interrogating officer reminded the defendant of his rights prior to the interrogation by asking him if he recalled his rights, understood them, or wanted an attorney; the clarity and form of the defendant's acknowledgement and waiver, if any; and the background and experience of the defendant in connection with the criminal justice system."); *People v. Hopkins*, 774 P.2d 849, 852 (Colo. 1989) (same).

i. The court of appeals misconstrued the "three precepts" rule from *People v. Al-Yousif*, 49 P.3d 1165 (Colo. 2002).

In its opinion, the court of appeals explains that this Court has "required that the prosecution demonstrate that the police accurately communicated and that the defendant understood 'three precepts: (1) he did not have to talk, (2) he could have

an attorney present, and (3) if he did talk, his statements could be used against him.'"(SlipOp.,p6) (quoting *Al-Yousif, supra* at 1172).

The court of appeals then goes on to suggest that because Sanchez was advised of, and apparently understood, these "three precepts," it was immaterial that he was not specifically advised that an "assigned" attorney *also* meant a free attorney, if he could not afford one.(SlipOp.,p12) Specifically, states the court, "We are satisfied that the assurance that an attorney would be assigned or appointed, when coupled with the phrase 'if you don't have the means,' adequately conveyed to defendant that an attorney would be provided free of charge if he could not afford one."(SlipOp.,p12)

In *Al-Yousif*, this Court states:

> [T]he totality analysis here is limited to the simple question of whether the defendant grasped three precepts: (1) he did not have to talk, (2) he could have an attorney present, and (3) if he did talk, his statements could be used against him. To broaden the inquiry beyond that simple question undermines the admissibility of confessions that are validly obtained, with no police misconduct, from a willing and *adequately informed suspect*.

Id. at 1172. (emphasis added).

However, this Court has never found that advising a suspect about his right to "have an attorney present" need not *also* include the explanation that this

attorney will be provided free of charge if the defendant cannot afford to one. Indeed, following *Al-Yousif*, this Court specifically states, "officers must inform a suspect that he has … the right to have an attorney present, and that an attorney will be appointed *free of charge* if the suspect cannot afford an attorney." *People v. Aguilar-Ramos*, 86 P.3d 397, 400 (Colo. 2004) (emphasis added) (citing *Miranda, supra* at 444); *See People v. Redgebol*, 184 P.3d 86, 93 ("The officers must inform the accused that he or she has the right to remain silent; that if the accused waives this right, anything he or she says may be used against him or her; that he or she has a right to have an attorney present; and that an *attorney will be appointed if the accused cannot afford one.*") (emphasis added). Thus, to the extent that the court of appeals here interprets *Al-Yousif* to mean that any and all suspects need only be advised of the general "three precepts" before a valid interrogation may begin, this is clearly incorrect.

ii. The court of appeals erred in affirming the denial of the motion to suppress the defendant's statements.

In her dissent, Judge Fox (relying primarily on *Aguilar-Ramos, supra*) insists that Sanchez could not "knowingly and intelligently" waive a "right he did not understand."(Slip,Op.,p23) In so concluding, Fox finds it critical that Sanchez "made it clear that he was concerned that an attorney would be expensive" and

Mendez, who interrogated the defendant, "agreed that the lawyer would want money for his services."(Slip,Op.,p25)

And though Mendez "mentioned, in a rapid and cursory manner, that [a lawyer] could be assigned, he obtained no assurance that Sanchez understood either the word 'assigned' or the American concept of court-appointed counsel. The concept of a court-appointed counsel is a foreign notion to a non-English-speaking, unsophisticated person."(Slip,Op.,p25) (citing *Redgebol, supra* at 98). Furthermore, according to Judge Fox, "[Mendez] could have easily cured the deficiency by simply asking Sanchez whether he understood what 'se le assignara' (which the officer used for 'will be assigned') meant, and explaining as necessary, right after he said those words and before he proceeded to interrogate Sanchez."(Slip,Op.,p25)

Just as Judge Fox contends, it is undeniable that based on his questions and representations, voiced just prior to the interrogation, Sanchez was particularly concerned with his inability to afford legal counsel before making a statement to police. However, instead of ensuring that the defendant understood that, in the United States, criminal defendants are entitled to consult with and be represented by a lawyer *free of charge*, Mendez confirmed that attorneys were indeed expensive ("Well the thing is yes, yes they are...") and merely stated that one

could be "assigned"[2] to the defendant without further elaboration. *See People v. Mejia-Mendoza*, 965 P.2d 777, 781-82 (Colo. 1998) (While "no translation is perfect...a person acting as an interpreter must be sufficiently capable of accurately expressing the substance of the suspect's rights."). Furthermore, not only did Mendez fail to explain that the appointment of an attorney would be free of charge, if Sanchez was unable to afford counsel, but Mendez quickly dismissed the defendant's concern by stating, "but the things, where we are, we are going to talk soon."

As defense counsel argued below, Sanchez (a Spanish-speaking immigrant) was clearly unfamiliar with the operation of the American criminal justice system, including the scope of the rights afforded the accused. As such, it was incumbent on the officer to ensure that before "waiving" his *Miranda* rights, the defendant was fully aware that he was relinquishing his right to consult with and be represented by an attorney for free. *See, e.g.*, *United States v. Perez-Lopez*, 348 F.3d 839, 848-49 (9th Cir. 2003) (*Miranda* warning defective where suspect was

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[2] According to Merriam-Webster, "assign" means: "to transfer (property) to another especially in trust or for the benefit of creditors"; "to appoint to a post or duty"; "to appoint as a duty or task"; "to fix or specify in correspondence or relationship"; "to ascribe as a motive, reason, or cause especially after deliberation." *See* http://www.merriam-webster.com/dictionary/assign. Notably, none of the definitions of the word "assign" even so much as imply that the thing assigned be done so for free or at no charge to the recipient.

not informed that he could receive an appointed attorney at no charge, emphasizing that thoroughness and clarity are particularly important when communicating with uneducated defendants); *United States v. Higareda-Santa Cruz*, 826 F. Supp. 355, 359-60 (D. Or. 1993) (advisement faulty where said, "In case that you do not have money, you have the right to petition an attorney from the court."); *People v. Diaz*, 140 Cal. App. 3d 813, 822 (1983) (*Miranda* advisement insufficient by merely stating, "[i]f you cannot get a lawyer, one can be named before they ask you questions"). Because he was not, the prosecution failed to carry its burden of proving that the defendant's purported waiver was accomplished "with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." *Moran v. Burbine*, *supra* at 421.

Accordingly, the trial court erred in denying the defendant's motion to suppress and finding that Mendez's advisement adequately and sufficiently addressed Sanchez's concern over being unable to afford an attorney prior to or during his interview. *See Al-Yousif*, *supra* at 1169 ("The courts must necessarily examine the objective circumstances surrounding the waiver in an effort to determine the suspect's level of understanding...Clearly, a defendant's alienage and unfamiliarity with the American legal system should be included among these objective factors.").

iii. The trial court's error, in failing to suppress Sanchez's statements, was not harmless beyond a reasonable doubt.

Whenever the trial court commits an error of "constitutional dimension," reversal is required unless the State can prove that the error was harmless beyond a reasonable doubt. *See, e.g., Griego, supra* at 4. (constitutional errors subject to harmless beyond a reasonable doubt standard). In other words, to be harmless, a reviewing court must be "confident beyond a reasonable doubt that the error did not contribute to the verdict." *People v. Grace*, 55 P.3d 165, 169 (Colo. App. 2001).

As noted, Sanchez was charged with and convicted of first degree murder committed after deliberation.(CD,2-8-08,p155-65) This particular form of homicide is a specific intent crime and consequently, the prosecution must prove not only that the defendant intended to cause the death of another person but that he also acted after deliberation. *See* §18-3-102(1)(a), C.R.S. (2006).

A person acts "intentionally" or "with intent" when his conscious objective is to cause the specific result proscribed by the statute defining the offense. §18-1-501(5), C.R.S. Furthermore, "after deliberation means not only intentionally but also that the decision to commit the act has been made after the exercise of reflection and judgment concerning the act. An act committed after deliberation is

never one which has been committed in a hasty or impulsive manner." §18-3-101(3).

At trial, the defense argued that Sanchez did not seek out an altercation with Guzman-Ramirez but rather, fired on him only after feeling sufficiently threatened—as the victim told Sanchez that he was going to kill him and rape his wife.(CD,2-7-08,p237-40,p258,p287-290) Furthermore, the defendant elicited evidence that a change in Sanchez's seizure medication, prior to the shooting, substantially influenced and disturbed the defendant's mental state and his actions against the victim.(CD,2-5-08,p196-98)

However, disputing that the shooting was anything other than an intentional, deliberative, "planned" and "plotted" murder, the prosecution relied heavily on Sanchez's unsuppressed statements where he admitted purchasing a gun and bullets for the sole purpose of shooting and killing the victim the following day. Indeed, throughout closing argument, the prosecution repeatedly recited the defendant's own words to dispute his self-defense claim and show that any lesser-included culpability, such as provocation or second degree murder, did not apply.(CD,2-8-08,p92-94,96-98,101,107-08,111,117-19,144-46,149)

As the prosecutor repeatedly argued, Sanchez's unsuppressed statements, more than any other piece of evidence, demonstrated the defendant's "exercise of

reflection and judgment concerning" the shooting and severely undermined his self-defense claim or any chance of him being convicted of a lesser offense. Accordingly, it cannot be argued that the trial court's error in failing to suppress the defendant's highly prejudicial statements, "did not contribute to the verdict," beyond a reasonable doubt or otherwise. *See Grace*, supra at 169. Thus, Sanchez's conviction should be reversed and his case remanded for a new trial.

CONCLUSION

For the reasons and authorities discussed above, the defendant respectfully requests this Court overrule the court of appeals' opinion, reverse his conviction and remand his case for a new trial.

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CERTIFICATE OF SERVICE

I certify that, on April 16, 2012, a copy of this Opening Brief of Defendant-Appellant was served on Emmy A. Langley of the Attorney General's Office by emailing a copy to AGAppellate@state.co.us.

APPENDIX

318 MM Like, here I'm going to put a few lines. This does not mean anything about you
319 being guilty of anything, o.k.? These are only your rights, but before I ask you
320 questions, or we talk, I need your permission from you to talk to you. Yes, you
321 understand me? Read here and put your initials. You know your initials?

322

323 Inter. Sí.
324 Inter. Yes.

325

326 MM O.K. Y sí lee el Español, ¿verdad?
327 MM O.K. And yes, your read Spanish, true?

328

329 Inter. O.K.

330

331 Det.G You asked him if he could read Spanish?

332

333 MM Yeah. He said yes. And he went through and he knows, where's he's at, huh, I
334 told him I want, I'm asking for his permission to talk. And he goes and puts....
335 I told him sometimes things happen in our lives, huh, we get mad, we get angry
336 and stuff happens but there's always reason that, that it occurred and it's
337 important to bring him to tell his side of the story.

338

339 PV O.K. Can you ask him if he currently has a vehicle with alcohol or drugs, either
340 legal or illegal.

341

342 MM Ricardo, esto no más es dándonos permiso de hablar con usted, o.k.? No es nada
343 que es culpable de nada ni nada. Es, es pa mí es importante hablar con usted
344 porque yo quiero saber razones, por qué, qué son las razones que pasó lo que
345 pasó.
346 MM Ricardo, this is only giving us permission to talk to you, o.k.? It is not that you are
347 guilty of nothing or anything. It, it is for me important to talk with you because I
348 want to know reasons, why, what were the reasons that what happened, happened.

349

350 Inter. O.K.

351

352 MM O.K.? Y asi, este, firma su nombre usted? Y abajito no mas este escriba su
353 nombre, asi con letra propria. Eso. Pues si entiende todo lo que leía?
354 MM O.K.? And here, like, sign your name? And below only write your name in print.
355 There. Well, you understood what you read?

356

357 Inter. Sí, que tengo el derecho a un abogado, que cuando quiera pare..
358 Inter. Yes, that I have the right to an attorney, that I can stop when I want…

359

360 MM La cosa que, lo que yo quiero. so es no más dándanos permiso de hablar con
361 usted. Lo que yo quiero es aclarar cómo fueron las cosas. Porque mire, yo tengo,
362 yo tengo este, quince años haciendo este.

363	MM	The thing that, what I want, it's only giving us permission to talk with you. What
364		I want is to clarify how things happened. Because look, I have, I have like, fifteen
365		years doing this.
366		
367	Inter.	Uh-huh.
368		
369	MM	Este, (*inaudiable*), yo. Y…
370	MM	Like, (*inaudiable*), me. And…
371		
372	Inter.	Pero eso, no es este muy necesario un abogado porque el abogado va a querer
373		dinero, ¿verdad? decide un abogado, porque el abogado va a querer dinero,
374		verdad?
375	Inter.	But that, it is not very necessary a lawyer because the lawyer is going to want
376		money, true? Decide a lawyer, because the lawyer is going to want money, true?
377		
378	MM	Pues, la cosa que si, si van a, si no tiene medios de ocuparlo un abogado se le
379		asignará, pero la cosas, hasta dónde estamos nosotros, si vamos a hablar horita.
380	MM	Well, the thing is yes, yes they are, if you don't have the means of hiring a lawyer
381		one would be assigned, but the things, where we are, we are going to talk soon.
382		
383	Inter.	Así es mejor, ¿verdad?
384	MM	It is better like this, true?
385		
386	MM	Pues no digo que es mejor. Si usted está dispuesto y …
387	MM	We I do not say what is better. If you are ready, I
388		
389	Inter.	Seguro, para qué le hacemos rodeos, verdad, sí al cabo, pues lo que se hizo se
390		hizo.
391	Inter.	Sure, why go around it, true, if finally, what was done, was done.
392		
393	MM	Lo que pasó, pasó. O.K. So, ¿horita usted está en un tipo de droga, o cerveza, o
394		algo así, alcohólico?
395	MM	What happened, happened. O.K. So, are you now on any type of drugs, or beer, or
396		anything like that, alcohol?
397		
398	Inter.	No.
399		
400	MM	¿No tiene nada en su sistema? Tiene usted sus drogas…qué le dan a usted
401		¿seizures? *(sic)*
402	MM	You don't have anything in your system? You have your drugs…what do you get,
403		seizures?
404		
405	Inter.	Ataques.
406	Inter.	Attacks.
407		