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On Certiorari to the Colorado Court of Appeals Court of Appeals Case No. 08CA630	
RICARDO JAMES SANCHEZ, Petitioner, v. THE PEOPLE OF THE STATE OF COLORADO, Respondent.	▲COURT USE ONLY▲ Case No. 11SC215
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PEOPLE'S ANSWER BRIEF

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:

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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.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

PAGE

CASES

STATUTES

ISSUES PRESENTED FOR REVIEW

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 AND FACTS

It is undisputed that the defendant, Ricardo Sanchez, shot Gustavo Guzman multiple times at close range on the morning of September 20, 2006, killing him (Opening Brief, p. 2; 2/6/08, pp. 19, 120, 122, 136, 256-57; 2/8/08, p. 121).

The day before, according to the defendant, he and the victim had an argument at work, and the victim threatened to rape the defendant's wife (People's Exhibit 61, lines 1333-67). Guzman had also previously made fun of the defendant repeatedly (People's Exhibit 61, lines 1711-

16, 1722-23; 2/6/08, pp. 155, 160-61). As a result, the defendant became fed up with the victim and decided to kill him (People's Exhibit 61, lines 1675-76, 1735-56). The next day, the defendant showed up to work and shot the victim multiple times, first in the back, and then, after reloading his gun, in the head (2/6/08, pp. 14-19, 118-22, 140; 2/7/08, pp. 254-55).

After killing Guzman, the defendant attempted to escape to Mexico, but was found and arrested by police in New Mexico (*see, e.g.,* 4/16/07, pp. 20, 35; 2/6/08, pp. 20; 264-65).

After being arrested, the defendant made statements to a police officer in New Mexico, Officer Miguel Mendez, confessing to murder after deliberation (People's Exhibit 61, *see, e.g.,* lines 1156-64, 1618-1620, 1630-43, 1676).

As a result, the defendant was charged with first degree murder (F1) with a violent crime sentence enhancer (v. 1, pp. 20-21). At trial, the defendant argued he acted in self-defense because of the victim's statement that he was going to kill the defendant and rape his wife (2/8/08, pp. 122, 127, 130-31). The defendant also presented a lesser

charge of second degree murder (v. 1, p. 125). However, the jury, after deliberating for fifty-six minutes, found the defendant guilty as charged (2/8/08, pp. 151, 154-55). The trial court thereafter sentenced the defendant to life in prison without parole (2/8/08, p. 165; v. 1, p. 155).

On February 11, 2011, the court of appeals affirmed the defendant's conviction. *People v. Sanchez*, No. 08CA630 (Colo. App. August 18, 2011) (not selected for publication). However, Judge Fox dissented in part because she believed "the prosecution did not carry its burden of proof to show that defendant's *Miranda* waiver was made 'knowingly and intelligently.'" *Slip. op.* at 22.

This Court granted certiorari to review the court of appeals' holding affirming the trial court's denial of the defendant's motion to suppress his statements.

SUMMARY OF THE ARGUMENT

The court of appeals did not err in affirming the trial court's motion to suppress. In citing *People v. Al-Yousif,* 49 P.3d 1165 (Colo. 2002), the court found that the police officer, in informing the defendant

that an attorney would be assigned, "if you don't have the means," adequately conveyed to the defendant that an attorney would be provided free of charge if he could not afford one.

Even assuming that the court of appeals erred in affirming the trial court's denial of the defendant's motion to suppress his statements, such error was harmless beyond a reasonable doubt. There was ample evidence of the defendant's deliberation and, contrary to the defendant's assertions, the admission of the defendant's statements did not undermine his self-defense claim, as those statements were the only basis for his self-defense claim.

STANDARD OF REVIEW AND ISSUE PRESERVATION

The People agree that in reviewing a defendant's motion to suppress, a trial court's findings of historical fact are entitled to deference and will only be overturned if they are not supported by competent evidence. *People v. J.L.M.*, 8 P.3d 435, 438 (Colo. 1999). However, a trial court's ultimate legal conclusion is reviewed de novo. *People v. Owens*, 969 P.2d 704, 707 (Colo. 1999). The People also agree

that the defendant preserved his argument in filing a motion to suppress his statements (v. 1, pp. 44-45), and in arguing at the motions hearing that the interviewing officer never told him that he had the right to an attorney if he could not afford one (4/16/07, p. 262). The trial court, however, denied the defendant's motion to suppress, finding that the defendant understood his right to an attorney (5/25/07, pp. 5-6).

Because the defendant preserved his objection, any error in the trial court's denial of the motion to suppress is reviewed under the constitutional harmless error standard. *Bartley v. People,* 817 P.2d 1029, 1034 (Colo. 1991). A constitutional error is harmless when the reviewing court is confident beyond a reasonable doubt that the error did not contribute to the verdict obtained. *Griego v. People,* 19 P.3d 1, 8-9 (Colo. 2001).

ARGUMENT

I. The court of appeals properly held that the trial court did not err in denying the defendant's motion to suppress.

A. Relevant facts.

1. The defendant's interview with Officer Miguel Mendez.

On September 21, 2006, the defendant was interviewed by Officer Miguel Mendez in Spanish after being apprehended in New Mexico (People's Exhibit 61). Before the interview began, the defendant filled out a *Miranda* waiver form.[1] The form told the defendant that he had the right to consult with an attorney before any questions were asked. *Slip Op.* at 7. It further informed the defendant that if he decided to answer questions without an attorney present, he had the right to stop answering the questions whenever he wanted, and that he also had the right to stop answering questions until he had an attorney present. *Slip Op.* at 7.

The form's waiver of rights read:

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[1] The People are unable to locate the *Miranda* waiver form in the record. Therefore, the references to the form will refer to the court of appeals' findings regarding the form.

> I have read this declaration of my rights. I am conscious of my rights. I know what my rights are. I am willing to give a statement and answer questions. I do not want a lawyer present at this time. I understand and know what I'm doing. There had [sic] not been any promises or threats made against me, no pressure has been used against me.

Slip Op. at 7.

Shortly after, the following exchange occurred:

> **Officer Mendez**: What I want is to clarify how things happened. Because look, I have, I have like, fifteen years doing this.
>
> **Defendant**: Uh-huh.
>
> **Officer Mendez**: Like (inaudible), me. And...
>
> **Defendant**: But that, 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?
>
> **Officer Mendez**: Well, the thing is 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.
>
> **Defendant**: It is better like this, true?
>
> **Officer Mendez**: We I do not say what is better. If you are ready, I...
>
> **Defendant**: Sure, why go around it, true, if finally, what was done, was done.

(People's Exh. 61, lines 363-91) (emphasis added).

Subsequent to this exchange the defendant confessed that the day before he murdered the victim, he had an argument with the victim during which the victim told him he was going to kill the defendant and rape his wife (*id.* at 1352-1367). The defendant told Mendez that he told the victim, "do me what you want, but with my family don't mess around" (*id.* at 1462-63). The defendant said the victim used to bother everyone at work, especially the defendant, and had a "loose mouth" (*id.* at 1711-47). As a result, the defendant told Mendez that he decided he was going to kill the victim the next day and went to a bank to withdraw money to give to his wife and to buy a gun to kill the victim (*id.* at 1611-20, 1675-76, 1823-1858, 2420-21).

During the interview with Mendez, he related that the next day, the victim again told him that he was going to kill him and "stay" with his wife (*id.* at 3997-4003). When the defendant told the victim that he was armed, the victim told him, "you can jack me off" (*id.* at 4051-75). Then, according to the defendant, the victim stated, "fuck your mother" which got the defendant "angry" (*id.* at 4127-4132). As a result, the defendant told Mendez that he "felt bad" and shot the victim "ten or

fifteen" times (*id.* at 4137-42, 4276-77). The defendant told Mendez that when he shot the victim, he did not see any weapons on the victim (*id.* at 4687-4708).

2. Motion to suppress.

On March 13, 2007, the defendant filed a "Motion to Suppress Statements," arguing that the statements made by the defendant after his arrest in New Mexico should be suppressed because they were taken in violation of the defendant's right to assistance of counsel (v. 1, pp. 44-45).

3. Motions hearing.

A motions hearing was held on April 16, 2007, and the trial court issued a ruling on May 25, 2007.

During the motions hearing, **New Mexico Officer Ramon Casaus** testified that when he told the defendant he was being arrested on a Colorado arrest warrant, the defendant told him he wanted to talk to the police about what happened (4/16/07, pp. 37-38, 45). He recalled that the defendant was "real cooperative" (*id.* at 46).

Officer Miguel Mendez testified that on September 21, 2006, he was asked to assist in conducting an interview of the defendant (*id.* at 118). He testified that Spanish was his first language (*id.* at 118). He recalled that the defendant was very calm, and that he did not have trouble communicating with the defendant (*id.* at 120). He testified that he reviewed the written *Miranda* advisement with the defendant (*id.* at 124). He recalled that the defendant appeared to be able to read the advisement and initialed each line (*id.* at 129, 135). He testified that the *Miranda* advisement stated, in Spanish, "You have the right to consult with an attorney to be counseled or be given advice before any—before we ask you any questions" (*id.* at 133). He testified that the advisement also informed the defendant that if he "decide[d] to answer questions now...without an attorney present... you also have the right to stop answering questions...until you have an attorney present" (*id.*).

On cross-examination, defense counsel pointed out that the *Miranda* waiver contained misspellings (*id.* at 142). Mendez also acknowledged that the *Miranda* advisement did not inform the defendant that if he could not afford an attorney, one would be

appointed (*id.* at 144). However, Mendez recalled that when the defendant asked him about whether lawyers would want money, he told the defendant that a lawyer could be expensive but that if he did not have the means of hiring a lawyer, one would be assigned (*id.* at 144-46). He also testified that he told the defendant, "We are going to speak soon" (*id.* at 146).

Carmen Carrillo, who later interpreted the Spanish interview between Mendez and the defendant to English for the transcript, testified that the transcript of the interview was an accurate translation (*id.* at 200, 202-03).

Defense counsel argued that the *Miranda* advisement was insufficient because, "at no time do they talk about him having the right to an attorney present if he can't afford one" (*id.* at 262). He asked the court to re-read the *Miranda v. Arizona* decision and stated:

> For years, people of *means* could always hire an attorney to have an attorney come down and help them out. If you were poor if you could not afford one, they you didn't have that right and you were just interviewed until you confessed whether you did it or not until you gave up and confessed to

> the crime and then were left alone by the police officers.

(*id.* at 265) (emphasis added). Defense counsel argued that the defendant asked questions about having the "means" to afford an attorney but that "at no time was he told he did not have to pay for that particular attorney" (*id.* at 265-66, 286). Defense counsel noted that the defendant had no prior connection to the criminal justice system (*id.* at 287).

The prosecutor conceded that the defendant was in custody during the interrogation (*id.* at 269). The prosecution also argued that, under *People v. Al-Yousif,* 49 P.3d 1165 (Colo. 2002), the court should deny the defendant's motion to suppress because the defendant was advised that: (1) he did not have to talk; (2) he could have an attorney present; and (3) if he did talk, the statements could be used against (*id.* at 270-71, 274). The prosecutor also pointed out that the defendant was advised that if he did not have the "means" to hire an attorney, one would be appointed for him (*id.* at 273). The prosecutor noted that the defendant, after being advised, appeared willing to talk (*id.*).

Court's ruling. After observing the witnesses' testimony, viewing the videotaped interview with the corresponding transcript, and hearing the arguments of counsel, the trial court denied the motion to suppress, concluding that the defendant's *Miranda* waiver was valid (5/25/07, pp. 3, 6-7). Regarding whether the defendant was properly advised that an attorney could be appointed for him if he could not afford one, the trial court found:

> He did ask a question about an attorney being expensive and he was told *that if he didn't have the means to hire one, one would be appointed for him.* That's what the Court tells people every day in court. He did not seem to have any confusion about that and I'm not going to presume that he didn't understand what that meant.
>
> He didn't ask any further questions about it and he said -- he answered something to the effect, 'It's better like this, true,' in other words to talk, and the law enforcement officer said, 'Well, I do not say what is better. If you are ready, I...' and Mr. Sanchez responded, 'Sure, why go around it, true, if finally what was done was done,' and went on to make statements all of which were clearly voluntary.

(5/25/07, pp. 6-7) (emphasis added).

Thus, the trial court found that when the defendant was informed, "If you don't have the means of hiring a lawyer, one would be assigned," he was adequately informed that, "even though lawyers are expensive, if he couldn't afford to hire one, one would be assigned to him" (*id.* at 14). The court, as a result, denied the motion to suppress (*id.* at 7). The court noted that it did not believe that any of the errors in the transcript of the interview were "material ones to the understanding of what happened in this interview" (*id.* at 8).

During trial, Mendez's recorded interview of the defendant and the transcript were admitted into evidence (2/7/08, p. 220). The jurors were each given a copy of the transcript (*id.* at 220, 224). Mendez also testified about the defendant's statements and demeanor during the interview (*id.* at 220-245, 249-99). The defense used the defendant's statements during the interview to argue that the defendant acted in self-defense (2/8/08, pp. 122, 127, 130-31).

4. Court of appeals' majority opinion.

The court of appeals quoted this Court's opinion in *People v. Al-Yousif,* 49 P.3d 1165 (Colo. 2002) to point out that a *Miranda* waiver requires "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.'" *Slip. op.* at 5-6 (*quoting Id.* at 1172).

In applying the law to the facts of this case, the court of appeals held that the trial court's findings and conclusions were supported by the record. *Slip op.* at 12. In particular, the court of appeals held:

> The form does not state that, if defendant could not afford an attorney, one would be provided free of charge. However, the colloquy between defendant and the officer discussed the provision of an attorney. The officer stated that, if defendant did not have the means to hire one, one would be appointed for him. The trial court indicated that such a statement was the same advisement it gives defendants during arraignment. *We are satisfied 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 free of charge if he could not afford one.

Slip. op. at 12 (emphasis added). The court further noted that the defendant did not present expert testimony concerning his linguistic difficulties, nor did the defendant testify about his understanding concerning the right to appointed counsel free of charge. *Slip. op.* at 15.

The court of appeals also noted that, although defense counsel pointed out that there were errors and inconsistencies in the translation of the interview, it found that none of the errors or inconsistencies were made in the context of Mendez's discussion of the defendant's right to counsel. *Slip. op.* at 9, 15.

As a result, the court held that "defendant understood those three key components of his *Miranda* rights." *Slip. op.* at 16.

B. The court of appeals did not improperly apply the "three precepts" rule from *People v. Yousif,* 49 P.3d 1165 (Colo. 2002) and thus properly affirmed the trial court's denial of the defendant's motion to suppress.

Under *Miranda v. Arizona,* 384 U.S. 436 (1966), before a person in custody may be interrogated, "that person must be warned that he has

a right to remain silent, that any statement he does make can be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed." *People v. May*, 859 P.2d 879, 882 (Colo. 1993) (*quoting Miranda*, 384 U.S. at 444). In other words, this Court has stated that "officers must inform a suspect 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) (*citing Miranda,* 384 U.S. at 444). The validity of a *Miranda* waiver has two separate dimensions:

> First, the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception. Second, the waiver must have been made with a full awareness, both of the nature of the right being abandoned, and the consequences of abandoning it.

May, 859 P.2d at 882 (*quoting People v. Hopkins*, 774 P.2d 849, 851 (Colo. 1989) (*quoting Moran v. Burbine*, 475 U.S. 157, 168 (1986)).

The prosecution has the burden of establishing by a preponderance of the evidence that a waiver was voluntary, knowing, and intelligent. *People v. Owens*, 969 P.2d 704, 706 (Colo. 1999). The

trial court determines whether that burden has been met by evaluating the waiver based on the totality of the circumstances. *Id.* Factors to be considered in a review of the totality of the circumstances include: the time between the advisement and interrogation; whether the defendant or the interrogating officer initiated the interview; whether and to what extent 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. J.L.M*, 8 P.3d 435, 438-39 (Colo. 1999). In addition, the trial court should consider a defendant's age, experience, education, background and intelligence as well as any language barriers encountered by him or her. *People v. Kaiser*, 32 P.3d 480, 484 (Colo. 2001).

In this case, the defendant argues that the court of appeals misconstrued the "three precepts" rule from *People v. Al-Yousif*, 49 P.3d 1165 (Colo. 2002). In particular, the defendant argues that the court of

appeals found it "immaterial that the defendant was not specifically advised that an 'assigned' attorney *also* meant a free attorney, if he could not afford one" (Opening Brief, p. 13) (emphasis in original). Therefore, the defendant argues that he did not validly waive his *Miranda* rights and thus the trial court erred in denying his motion to suppress his statements (Opening Brief, p. 17).

However, the court in appeals, in citing *Al-Yousif,* quoted this Court's language in *Al-Yousif* verbatim. It pointed out that in proving knowing and intelligent *Miranda* waiver, the prosecution must demonstrate that the police accurately communicate and the defendant understand "three precepts: (1) he did not have to talk, (2) he could have an attorney present, and (3) if he did talk, his statement could be used against him." *Slip. Op.* at 5 (*quoting Al-Yousif*, 40 P.3d at 1172); *Aguilar-Ramos,* 86 P.3d at 401.

Furthermore, the court of appeals did not find it "immaterial" that the defendant was not specifically advised that an attorney would be provided free of charge if he could not afford one, but instead held that:

> 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 that an attorney would be provided free of charge if he could not afford one.

Slip. Op. at 12.[2] Indeed, even the Supreme Court's *Miranda* opinion, does not use the exact words "free of charge." *Miranda*, 384 U.S. at 444.

However, in maintaining that he did not validly waive his *Miranda* rights, the defendant relies upon Judge Fox's dissent, which emphasizes the issue of the language barrier and argues that Sanchez was "clearly unfamiliar with the operation of the American criminal justice system" (Opening Brief, pp. 15-16). But, the defendant did not present testimony that he was confused or had problems understanding cultural differences. As the trial court found, the defendant did not

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[2] As part of his argument, the defendant suggests that the meaning of an attorney being assigned was unclear. The defendant cites the Merriam-Webster definition of "assign," and points out that the definition does not "imply that the thing assigned be done so for free or at no charge." However, the definition does not consider the context of the use of the word. Here, it was used with the phrase, "if you don't have the means." Indeed, here, defense counsel, during the suppression hearing, used the words "means" to imply money, or lack thereof (4/16/07, pp. 265-66).

appear confused during the interview after being told that he would be assigned an attorney if he did not have the means.

The defendant also failed to establish any language barriers to his understanding. As the court of appeals held, there were "no intellectual disabilities here, because defendant could read and write Spanish" and the *Miranda* form was already in Spanish. *Slip. Op.* at 13. Therefore, this case is significantly different than the cases relied upon by the defendant and Judge Fox. Furthermore, the facts supporting the admission of the defendant's statements are stronger here than the facts in *People v. Al-Yousif*, in which this Court allowed the admission of statements.

1. *People v. Aguilar-Ramos.*

In *People v. Aguilar-Ramos,* the defendant was picked up in connection with a kidnapping and assault. *Aguilar-Ramos,* 86 P.3d at 398. When the defendant was read his *Miranda* rights, presented with a written *Miranda* form, and asked if he understood his rights, the defendant responded, "What does it mean yes. If I want my attorney...How...how...can I put down here?" *Id.* at 399. In response,

the interviewing detective stated, "O.K. The...question is, do you understand these rights that I have explained. Answer yes or no." *Id.*

Next:

> Detective Lobato then explained to Aguilar-Ramos that he needed to sign the form so that he could talk to the detective, and further told him that "when you talk to me if you don't want to talk to me no more, say to me, I don't want to talk to you." Aguilar-Ramos laughed in response to that advisement, and proceeded to sign the form as directed.
>
> Detective Lobato allowed the defendant to read the form twice more, whenever questioning resumed. Each time, the detective asked Aguilar-Ramos if he understood his rights, and the defendant indicated that he did. On a couple of occasions, other officers, none of whom spoke Spanish, entered the interview room in order to convey information to Detective Lobato or to direct the detective to ask specific questions of the defendant.

Id. Over the course of the questioning, the defendant made incriminating statements.

At the suppression hearing, the interviewing detective testified that he had only received one or two years of Spanish language instruction, that he used English words during the interrogation, and

that he did not "catch" the defendant's request about how to obtain an attorney. *Id.* In addition, the defense presented an expert witness, a certified court interpreter, who testified that the detective's lack of proficiency in Spanish rendered him unable to effectively communicate with the defendant. *Id.* The expert further noted that, in advising the defendant of his right to have counsel present, the detective used a word that could mean "to appoint or to design." *Id.*

The defendant himself later testified during the hearing that:

> [H[e had only three years of schooling in Mexico, that he had been in the country illegally for only fifteen days when he was picked up, and that he was scared when he was picked up because he "didn't know what was going on" and he was afraid "maybe [the officers] were going to beat [him] up." Finally, [the defendant] stated that he did not understand what was being told to him when the warnings were being read, and although he tried to learn how to obtain an attorney, the detective would not tell him anything.

Id. at 399-400. As a result, this Court reversed the trial court's denial of the defendant's motion to suppress his statements because the record indicated that the defendant was not properly advised of, and did not understand his *Miranda* rights based on: the detective's difficulties in

communicating with the defendant; the detective ignoring the defendant when the defendant attempted to learn more about his right to an attorney; and the record support that neither the defendant nor the detective had any "idea what the other was talking about." *Id.* at 402.

Therefore, this case is different than *Aguilar-Ramos* because, here: (1) the interviewing officer's first language was Spanish; (2) the interviewing officer responded to the defendant's inquiry about his right to an attorney; (3) the defendant did not testify that he was confused by the interviewing officer's response; (4) the defendant did not present expert testimony showing he could be confused by the defendant's response; (5) the trial court found that the defendant did not appear to be confused the by officer's answer to the defendant's inquiry about his right to counsel; (5) defense counsel did not assert there were mistakes in the translation regarding the defendant's right to counsel; and (6) the defendant had been in this country much longer than the defendant in *Aguilar-Ramos.*

2. *People v. Redgebol.*

In *People v. Redgebol,* 184 P.3d 86 (Colo. 2008), the defendant, who grew up in a small Dinka village in southern Sudan, was accused and arrested for sexual assault on a child by one in a position of trust. The defendant had never attended school before being arrested. *Id.* at 88. During the interview, a translator, whose first language was different than the defendant's, translated the interview. *Id.* Because all interview rooms were occupied after the defendant's arrest, the interview occurred in a paperwork room and thus was not video-recorded. *Id.* Before the interview, the detective informed the defendant that he had a right to have a lawyer appointed, and this Court determined that it was "clear" that the defendant did not understand the role of a lawyer. *Id.* at 89.

During the suppression hearing, the translator testified that she, herself, was confused about the process for obtaining a lawyer. *Id.* at 91. She also testified that English words do not always translate into the defendant's first language, and testified that she told the defendant that if he could not afford a lawyer, one would be "found" for him. *Id.*

She testified that she spoke in Arabic some of the time because the defendant "seemed" to understand it. *Id.*

The translator also testified about the Dinka legal system. She explained:

> In the Dinka system, disputes are handled by the tribe's chief and elders, often while sitting under a tree. The parties to the dispute do not have the right to remain silent, but rather the right to tell the truth; that is, they are compelled to tell the elders what happened. [The translator] stated that there are only cultural laws, not written ones. There are no lawyers in the system, but one's family and friends can come and defend one or speak as a witness. Indeed, the Dinka system functions as a dispute between the families, not the individuals involved. [She] testified that prisons do exist in Sudan, but the usual punishment handed down by the elders requires the losing party's family to give cows to the victorious party's family as compensation.

Id. at 91-92. The defendant's brother also testified that the defendant had grown up in a small village with no electricity, newspaper, school, television or English classes. *Id.* at 92. The trial court subsequently granted the defendant's motion to suppress and this Court affirmed the ruling. This Court based its holding on the "combined effects of the

translator's inadequate translation, the substantial miscommunication with the parties, and Redgebol's cultural background." *Id.*

Accordingly, this case is different than *Redgebol* because, here: (1) the interviewer's first language was Spanish, which was the defendant's first language and the language used during the interview; (2) the interview was videotaped to allow the trial court to review the defendant's demeanor; (3) the trial court determined that the defendant did not appear confused by the advisement about the defendant's right to have an attorney present; and (4) the defendant did not present testimony regarding the cultural differences between the American justice system and the justice system of the defendant's first country, Mexico and, in the very least, was familiar enough with the American justice system to know that lawyers typically require payment for their services.

3. *People v. Mejia-Mendoza.*

In *People v. Mejia-Mendoza,* the defendant was arrested on suspicion of sexual assault and third degree assault. 965 P.3d at 778. Before being interviewed, the defendant was read his rights through an

interpreter. *Id.* The advisement was read "without pause and without opportunity for Mejia-Mendoza to indicate whether he understood each individual right." *Id.* And, without instruction from the police, the interpreter told the defendant:

> [Y]ou won't make any promises, that there hasn't been made any, that nothing has been promised to you. We haven't, no-one has promised you anything. Whatever you say could be used against you. *Just because you say something you'll be released, are we clear?* There is no promises. There is no pressure, no one is pressuring you. No one is forcing you by any means to make you talk will you agree?

Id. at 779 (emphasis added). Regarding the defendant's right to counsel, the interpreter told him:

> If you don't have an attorney, the Court will give you an attorney. That is the most important thing is that you feel comfortable about making a statement. Then we can continue with this case. Do you agree?

Id.

When later asked if he understood his rights, the defendant replied, "Mhm." *Id.* When the detective asked again, the interpreter, without conferring with the defendant, replied that the defendant

understood his rights and did not want to speak with an attorney. *Id.* After a hearing on the defendant's motion to suppress his statements, the trial court granted the motion and this Court affirmed the ruling. *Id.* at 781. This Court noted that "the interpreter made inaccurate word choices, embellished the advisement with misleading statements, and improperly told the detective that Mejia-Mendoza had waived his rights when he had said nothing." *Id.* at 782.

Unlike the situation in *Mejia-Mendoza*, here: (1) there was no interpreter, as the person who conducted the interview spoke Spanish directly to the defendant; (2) the defendant explicitly told the police that he wanted to waive his rights; (3) there was no indication that the interviewer misled the defendant or implied that the defendant answered questions in ways that the defendant did not; and (4) as the court of appeals stated, "while... defense counsel was able to point out [errors in the translation], none of those errors appear to have been made in the context of the officer's discussion of the right to counsel." *Slip. Op.* at 15.

4. *People v. Al-Yousif.*

In *People v. Al-Yousif,* this Court reversed the trial court's order suppressing the defendant's statements. 49 P.3d at 1167. The defendant, a native of Saudia Arabia, was arrested in connection with a murder. *Id.* Before interviewing the defendant, the detectives asked the defendant if they had coerced him or threatened him into making a statement, the defendant replied, "What statement?" to which the detectives replied they were referring to the statement the defendant was about to make. *Id.* The defendant later made incriminating statements and led police to the victim's body. *Id.*

During the suppression hearing, the defendant presented three expert witnesses who testified that the defendant did not understand his rights, explained the cultural background of a Saudi Arabian student, and testified that the defendant's comprehension level was below the reading level required to read the *Miranda* form. *Id.* at 1171.

This Court found that the defendant had validly waived his *Miranda* rights. This Court reasoned that, in waiving *Miranda* rights, a defendant "need not understand every consequence of his decision to

waive." *Id.* at 1169. In addition, this Court rejected the notion that the defendant's cultural background caused him to misinterpret his *Miranda* rights, and noted that when the defendant did not appear to understand a question or word, he asked for clarification. *Id.* at 1172.

Therefore, this case is factually similar to *Al-Yousif* and the defendant's statements should be similarly admissible. As in *Al-Yousif*, here, the interview was videotaped and the defendant requested clarification when necessary and did not seem to be confused. However, in this case, unlike in *Al-Yousif,* the defendant did not present any expert testimony regarding whether he appeared to have understood his rights, his cultural background, and his comprehension level, and there is nothing to suggest that cultural confusion prevented the defendant from validly waiving his rights. In any event, as the court of appeals pointed out, a defendant's cultural background has limited relevance; it goes "only to whether he understood his basic choices—not whether he understood the tactical advantages of each [choice] or the constitutional premises upon which they are based." *Slip. Op.* at 5 (*citing Al-Yousif,* 49 P.3d at 1170).

In sum, the defendant was advised that if he did not have the "means" to hire a lawyer, one would be assigned. He did not act confused based on this advisement. Thus, based on existing precedent, he was adequately informed that an attorney would be provided free of charge if he could not afford one. His *Miranda* waiver was knowing and intelligent. *Miranda*, 384 U.S. at 444.

II. Even assuming, *arguendo*, that the court of appeals erred in affirming the trial court's denial of the defendant's motion to suppress, such error was harmless beyond a reasonable doubt as there was ample evidence of the defendant's deliberation beyond his own statements.

Here, defendant contends that any error committed by the trial court in failing to suppress his statements was not harmless beyond a reasonable doubt. Specifically, he argues that his own statements regarding deliberation "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" (Opening Brief, pp. 19-20).

In this case, the defendant was convicted of first degree murder after deliberation (v. 1, p. 106). Such a crime requires that a person, "After deliberation, and with the intent to cause the death of a person other than himself, [ ] causes the death of that person or of another person." § 18-3-102(1)(a), C.R.S. (2006). "The term '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." §18-3-101(3). "An act committed after deliberation is never one which has been committed in a hasty or impulsive manner." § 18-3-101(3). Here, even assuming the defendant's confession was improperly admitted, there was ample evidence of the defendant's deliberation beyond his own statements.

During trial, **Ramon Sanchez,** the defendant's brother, testified that he was working with the defendant and the victim the day of the shooting (2/6/08, pp. 6-9). He testified that his brother seemed "[h]appy" the morning of the shooting (*id.* at 13). And, right before his brother shot Guzman, Ramon Sanchez remembered that his brother

came up to him and stated, "Goodbye. I'm tired of this life" (*id.* at 15-16).

The defendant's wife, **Maria Ofelia Rojas,** testified that the morning of the shooting, before leaving for work, the defendant told her that he loved her very much and "to take care of ourselves" (*id.* at 48). She testified that before leaving for work, the defendant gave her around $1000 "for an emergency, if something happened" (*id.* at 51). She recalled that her husband wore "nice" pants to work instead of his usual jeans that were "already dirty with cement" (*id.* at 49-50). She also testified that the defendant drove a different car to work that day and that the car he usually drove had trouble driving "far, far away" (*id.* at 54-55). She testified that the car he took that day was the car he took "Whenever he had to go to places 40 minutes or longer" (*id.* at 55). She further recalled that the morning of the shooting, the defendant took more medicine with him than usual, and that he took extra medicine "when he thought they were going to be getting off work late" (*id.* at 59).

Rojas also testified that when the defendant got home from work the day before, he appeared, "restless," "upset" and was acting different (*id.* at 56, 71, 74).

Louis Valles, a co-worker of the defendant and the victim, testified that the defendant walked quickly towards the victim before shooting him (*id.* at 120). He remembered that before he heard the gunshots, he did not hear the defendant and the victim talking or yelling at each other (*id.* at 121).

Christian Molina, a co-worker of the defendant and victim, testified that the defendant approached the victim before shooting him and that he heard the defendant say, "Nobody make fun of the Sanchezes" (*id.* at 137, 143). He testified that he was about 25-30 feet from the defendant during the shooting and did not hear an argument or yelling between the defendant and the victim (*id.* at 138). Molina testified that the defendant shot the victim in the back first, and then reloaded his gun and shot the victim in the head (*id.* at 140). He recalled that after the shooting, the defendant told him, "I had to do what I had to do. Nobody made fun of the Sanchezes" (*id.* at 152). He

testified that the victim had made fun of the defendant in the past for having seizures (*id.* at 155).

In sum, the evidence demonstrates that the defendant deliberated before shooting and killing the victim, as he told his brother "Goodbye" before even approaching the defendant, and told his wife to take care of herself, gave her money for an "emergency," took a car that could drive further distances, presumably to escape to Mexico, and took more than the normal amount of medicine with him before leaving. In addition, Valles and Molina testified that the defendant approached the victim before shooting him, and did not have a verbal exchange with the victim, negating any self-defense claim. There was ample evidence of deliberation without the defendant's confession.

Moreover, although the defendant argues that the admission of his confession undermined his self-defense claim, his self-defense claim, which was his only defense, was grounded entirely on the confession, during which he told Mendez that the victim threatened to kill him and rape his wife. And, even those statements do not demonstrate self-defense as the defendant, in the interview, told Mendez that he did not

shoot the victim until the victim insulted his mother. Moreover, the final shot to the victim's head was after the defendant reloaded his gun, providing further evidence of deliberation. Furthermore, to the extent that the defendant argues that he was intoxicated during the murder, the court of appeals found, "there is no indication that defendant did not know where he was or what he was doing at the time he committed the offense" and whether there was credible evidence of his intoxication is not an issue before this Court. *Slip Op.* at 21.

Accordingly, any error in the trial court's admission of the defendant's interview was harmless beyond a reasonable doubt. *Griego,* 19 P.3d at 1.

CONCLUSION

For the foregoing reasons, this Court should affirm the court of appeals' judgment affirming the defendant's conviction.

JOHN W. SUTHERS
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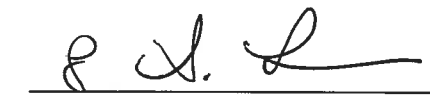

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CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **PEOPLE'S ANSWER BRIEF** upon **JOSEPH P. HOUGH**, Deputy State Public Defender, by delivering copies of same in the Public Defender's mailbox at the Colorado Court of Appeals office this 27th day of August 2012.

C. D. Minor