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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

MELVIN LEE SATCHER,

Defendant and Appellant.

E052777

(Super.Ct.No. FVI1002158)

**OPINION**

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

Steven A. Torres, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Senior Assistant Attorney General, and William M. Wood and Marvin E. Mizell, Deputy Attorneys General, for Plaintiff and Respondent.

The body of Sandi Duncan was found in the desert; she had been robbed, strangled, and shot to death. Her phone records showed that the last call made to or from

her cell phone was between her and defendant Melvin Lee Satcher. Defendant's own phone records showed that, around the time of death, he was in the same desert area as the body. A shoeprint matching defendant's shoes was found at the scene. When the police interviewed defendant, he lied repeatedly, including about when he last saw the victim and when he last tried to phone her.

A jury found defendant guilty of first degree murder (Pen. Code, §§ 187, subd. (a), 189) and second degree robbery (Pen. Code, §§ 211, 212, subd. (c)). In connection with each count, an armed principal enhancement (Pen. Code, § 12022, subd. (a)(1)) was found true. Defendant was sentenced to a total of 26 years to life in prison, along with the usual fines and fees.

Defendant contends that:

1. The trial court erred by admitting defendant's statement to the police on the theory that he was not entitled to *Miranda*<sup>1</sup> warnings because he was not in custody.
2. There was insufficient evidence that defendant was involved in the robbery and murder.

We find no error. Hence, we will affirm.

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<sup>1</sup> *Miranda v. Arizona* (1966) 384 U.S. 436 [86 S.Ct. 1602, 16 L.Ed.2d 694].

## I

### FACTUAL BACKGROUND

Sandi Duncan (nicknamed “Sweet P”) lived in Barstow. She was going to Barstow Community College.

On Sunday, September 20, 2009, Duncan cashed a financial aid check. It was actually for \$458.37; however, she had told friends that it would be for over \$1,000 and perhaps as much as \$1,600.

Duncan went back home and showered, then phoned someone for a ride. Around 11:30 a.m., she left her house. She said she would be back later. That night, when she had not returned, one of her roommates phoned her and texted her, but she did not respond.

The next day, Monday, September 21, 2009, around 5:30 p.m., Duncan’s dead body was found. It was lying in a dry creek bed in a remote desert area in Apple Valley, about 30 miles outside of Barstow. She had no identification and no money (aside from some small change in a pocket).

Ligature marks and petechial hemorrhages indicated that Duncan had been strangled. However, she had also been shot twice, once in the chest and once in the abdomen. The two bullets were found under the body. Next to the body, there were two fired cartridge cases, plus one unfired bullet.

She had evidently been shot where she lay. Shooting, not strangulation, was the cause of death; she was still alive when she was shot. Based on forensic evidence, Duncan may have died either on September 20 or before 10:00 a.m. on September 21.

Near the body, there were fresh tire tracks. There were also shoe prints; some of the shoe prints were on top of the tire tracks. The shoe prints were of two different patterns. One was a waffle pattern used by Vans, as well as by other manufacturers. The other had a ball in the front and a zigzag in the back. None of the shoeprints matched Duncan's own shoes.

The police checked Duncan's cell phone records. These showed that in the morning of September 20, Duncan and defendant made a number of phone calls and "chirps" to each other. The very last call to or from Duncan's phone was a chirp from Duncan to defendant at 11:36 a.m.

Defendant's cell phone records showed that on September 20, at 2:57 p.m., someone made a call to his phone that went through a cell phone tower on Willow Springs Road in Apple Valley. Defendant did not answer the call; it went to voice mail. This tower was less than two miles from where the body was found. The maximum range of a cell phone tower is from two to ten miles. A call generally goes to the nearest tower, although this can be affected somewhat by the presence of buildings, by weather, and by the strength of the tower's signal.

On September 23, 2009, Detective Neal Rodriguez stationed himself outside defendant's apartment. He then phoned defendant and asked to talk to him about Duncan.

Defendant agreed, but he added that he was not home at the time; he was in Fort Irwin, but he would be home in 45 minutes. Actually, defendant was in his apartment; Detective Rodriguez saw him leave about 20 minutes later.

Meanwhile, defendant phoned a friend. He said he needed a ride because he wanted the police to think he was at Fort Irwin. He added that he was nervous because the police wanted to talk to him about a girl named Sweet P who had been found dead in the desert.<sup>2</sup> The friend picked him up, drove him around for awhile, then dropped him off back at his apartment. Detective Rodriguez and a second officer then interviewed defendant. During the interview, defendant repeated several times that he had just gotten back from Fort Irwin.

Defendant said that he and Duncan both went to Barstow Community College. They were “close friends.”<sup>3</sup> The last time he had seen her was on Monday, September 21. She had visited his apartment, arriving between 8:00 and 10:00 a.m. and staying 30 or 45 minutes. She phoned somebody to come pick her up. She was supposed to come back later that day but did not. He phoned her and texted her, but she did not respond.<sup>4</sup>

On September 22, around 11:30 a.m., defendant claimed a friend told him that Duncan had been found dead in the desert. Defendant volunteered that Duncan’s male

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<sup>2</sup> This is according to the friend’s statement to the police. At trial, the friend testified that defendant did not make any incriminating statements.

<sup>3</sup> Defendant’s roommate testified that Duncan came over to their apartment a few times.

<sup>4</sup> This was, of course, false, as shown by the phone records.

roommate was a likely suspect. The roommate had supposedly threatened her, and she wanted to move out.<sup>5</sup>

Defendant also volunteered that Duncan had disappeared around the time she “got paid.” He explained that on Friday, September 18, she had received (and supposedly cashed) a financial aid check. He suggested that her roommate had killed her for the financial aid money.

Defendant said the last time he had been in the Apple Valley area was on Friday, September 18, when he drove through it on the way to Victorville. He also said that he kept his cell phone with him at all times.

On Monday, September 28, 2009, a police officer stopped a car in which defendant was the passenger. The driver was one Phillip Franke.<sup>6</sup> Recently, Franke had been staying at defendant’s apartment every other weekend.

The officer searched Franke’s car. Under the passenger seat, he found a distinctive beaded purse later identified as Duncan’s. It had been turned inside out. The tires on the car matched the tire tracks found near the body. The officer arrested Franke, but not defendant.

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<sup>5</sup> The police never found any other evidence linking the roommate to the crime. Defendant did not introduce any evidence corroborating his allegations about the roommate.

<sup>6</sup> Originally, the information charged defendant jointly with Franke. Later, Franke’s case was severed. Franke was tried and convicted and has filed a separate appeal. (No. E053756.)

On September 28, 2009, Detective Rodriguez interviewed defendant again. Defendant was wearing a pair of Air Jordan shoes that matched the ball-and-zigzag prints.

Although defendant's home and Franke's home were both searched, no gun was ever found.

## II

### “CUSTODY” FOR PURPOSES OF *MIRANDA*

Defendant contends that the admission of his statement to Detective Rodriguez violated *Miranda*.

#### A. *Additional Factual and Procedural Background.*

In the People's trial brief, they argued that defendant's statement was admissible because he was not in custody at the time. Defense counsel conceded, “[I]t appears [the interview] was noncustodial,” but he insisted that “the People prov[e] that up . . . .”

Accordingly, the trial court held an evidentiary hearing, at which Detective Rodriguez testified as follows.<sup>7</sup>

Detective Rodriguez wanted to interview defendant because defendant was the last person who had talked to Duncan on the telephone, and he wanted to know what they said.

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<sup>7</sup> Both sides cite the transcript of the interview itself. The interview, however, was not introduced at the evidentiary hearing; indeed, defense counsel agreed that the trial court did not need to consider it. Accordingly, it is irrelevant. We merely note that, even if we were to consider it, it would not change the outcome.

On September 23, 2009, Detective Rodriguez phoned defendant. He said he wanted to talk to defendant about Duncan; defendant agreed. Detective Rodriguez suggested that defendant come down to the sheriff's station, but defendant asked Detective Rodriguez to come to his apartment instead, and Detective Rodriguez agreed.

Detective Rodriguez arrived, accompanied by a second detective. Defendant met them in the parking lot and escorted them into his apartment. Detective Rodriguez was wearing a badge and had a gun in a holster. He asked where defendant would like to sit. Defendant indicated his living room. Detective Rodriguez sat on the couch. The interview lasted 30 or 40 minutes. The tone was "conversation[al]." Detective Rodriguez never drew his gun. Defendant was never handcuffed and never under arrest.

At the end, Detective Rodriguez thanked defendant for talking to them and said they might talk to him again later. Defendant was not arrested for about another a week.

Defense counsel submitted without argument.

The trial court ruled that defendant was not in custody: "I do not see that a reasonable person in the position of Mr. Satcher would form the conclusion that he was under arrest at that point."

B. *Analysis.*

Under *Miranda*, "[b]efore being subjected to "custodial interrogation," a suspect "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.” [Citation.]” (*People v. Leonard* (2007) 40 Cal.4th 1370, 1399-1400.)

“An interrogation is custodial, for purposes of requiring advisements under *Miranda*, when ‘a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.’ [Citation.] Custody consists of a formal arrest or a restraint on freedom of movement of the degree associated with a formal arrest. [Citations.] When there has been no formal arrest, the question is how a reasonable person in the defendant’s position would have understood his situation. [Citation.] All the circumstances of the interrogation are relevant to this inquiry, including the location, length and form of the interrogation, the degree to which the investigation was focused on the defendant, and whether any indicia of arrest were present. [Citation.]” (*People v. Moore* (2011) 51 Cal.4th 386, 394-395.)

“Whether a defendant was in custody for *Miranda* purposes is a mixed question of law and fact. [Citation.] When reviewing a trial court’s determination that a defendant did not undergo custodial interrogation, an appellate court must ‘apply a deferential substantial evidence standard’ [citation] to the trial court’s factual findings regarding the circumstances surrounding the interrogation, and it must independently decide whether, given those circumstances, ‘a reasonable person in [the] defendant’s position would have felt free to end the questioning and leave’ [citation].” (*People v. Leonard, supra*, 40 Cal.4th at p. 1400.)

Here, virtually *all* of the relevant indicia demonstrated that defendant was *not* in custody. The investigation had not yet focused on him; Detective Rodriguez wanted to interview him simply because he was the last person known to have talked to Duncan. He was allowed to choose where the interview took place, and he chose the most comfortable, least coercive environment possible — his own living room. The interview was conversational rather than accusatory. When the interview was over, the officers thanked him; they did not arrest him.

Only two indicia even arguably pointed toward custody. First, there were two officers present, not just one. However, this would not make a person interviewed in his own home think that he was under arrest. Second, there was no evidence that defendant was expressly told that the interview was voluntary. Again, however, defendant was in his own home. It would be nonsensical to tell him that he was “free to go.” Certainly the officers could have told him that he was free to terminate the interview at any time, but they did not have to do so; under the circumstances, this was implicit.

The trial court therefore correctly ruled that defendant was not in custody for purposes of *Miranda*.

### III

#### THE SUFFICIENCY OF THE EVIDENCE OF IDENTITY

Defendant contends that there was insufficient evidence that he was involved in the charged murder and robbery.

“In reviewing a claim [of in]sufficiency of the evidence, we must determine whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime . . . beyond a reasonable doubt. We review the entire record in the light most favorable to the judgment below to determine whether it discloses sufficient evidence — that is, evidence that is reasonable, credible, and of solid value — supporting the decision, and not whether the evidence proves guilt beyond a reasonable doubt. [Citation.] We neither reweigh the evidence nor reevaluate the credibility of witnesses. [Citation.] We presume in support of the judgment the existence of every fact the jury reasonably could deduce from the evidence. [Citation.] If the circumstances reasonably justify the findings made by the trier of fact, reversal of the judgment is not warranted simply because the circumstances might also reasonably be reconciled with a contrary finding. [Citation.]” (*People v. Jennings* (2010) 50 Cal.4th 616, 638-638.) “The conviction shall stand ‘unless it appears ‘that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].’” [Citation.]” (*People v. Cravens* (2012) 53 Cal.4th 500, 508.)

Defendant could be guilty as a direct perpetrator or as an aider and abettor. (Pen. Code, § 31.) “ . . . ‘It is settled that as long as each juror is convinced beyond a reasonable doubt that defendant is guilty . . . , it need not decide unanimously by which theory he is guilty. [Citations.] More specifically, the jury need not decide unanimously whether defendant was guilty as the aider and abettor or as the direct perpetrator. . . . [¶] . . . [¶] Not only is there no unanimity requirement as to the theory of guilt, the

individual jurors themselves need not choose among the theories, so long as each is convinced of guilt. Sometimes, as probably occurred here, the jury simply cannot decide beyond a reasonable doubt exactly who did what. There may be a reasonable doubt that the defendant was the direct perpetrator, and a similar doubt that he was the aider and abettor, but no such doubt that he was one or the other.’ [Citations.]” (*People v. Jenkins* (2000) 22 Cal.4th 900, 1024-1025.)

As defendant concedes, someone robbed and murdered Duncan. He even concedes that there was sufficient evidence that Franke committed the crimes “with the help of a second person.” He merely argues that there was insufficient evidence that he was that second person.

There was ample evidence, however, that defendant was present during the robbery and murder. Defendant and Duncan phoned each other repeatedly until about 11:30 a.m., when they presumably met up. After that, defendant did not phone Duncan at all, indicating that he knew she was dead. His cell phone was near the crime scene. His Air Jordans matched the ball-and-zigzag pattern found at the crime scene. The second pattern showed that a second person was also there — presumably Franke, as Franke’s tires matched the tracks found at the scene, and the victim’s purse was found in Franke’s car. Significantly, the purse was under the passenger seat, and defendant was the passenger. Defendant and Franke were evidently close, as Franke spent every other weekend at defendant’s apartment.

In addition, defendant displayed consciousness of guilt. When Detective Rodriguez first contacted him, he lied and said he was at Fort Irwin — presumably to buy time so he could iron out his story. He lied again when he said Duncan had visited him on September 21 between 8:00 and 10:00 a.m. and had phoned someone to come pick her up. He lied yet again when he said he tried to phone her several times that day. And he lied when he said he had not been in Apple Valley since September 18.

Defendant argues that Air Jordans are common — indeed, “ubiquitous.” However, there was no evidence that *all* Air Jordans have the same ball-and-zigzag pattern.<sup>8</sup> Somewhat to the contrary, Detective Rodriguez testified that this pattern was “real distinctive.” In any event, even if the pattern had merely matched Air Jordans in general, the shoeprint, in *combination* with the other evidence, would still be substantial evidence that defendant was at the scene.

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<sup>8</sup> Defendant asserts that there are “easily over 100 different styles of Air Jordan shoes,” citing <<http://www.pickyourshoes.com/shoes.asp?productcode=12>>.

We decline to consider this because it was not in evidence at trial. Interestingly, however, the cited website shows that Air Jordans have *many* different sole patterns. Only one of these could be described as a ball-and-zigzag pattern (<<http://www.pickyourshoes.com/Jordan-Evolution-85>>, as of July 18, 2012), and it was not necessarily the particular ball-and-zigzag pattern shown at trial. (See, e.g., <<http://www.airjordans2012.org/air-jordan-14xiv-originaloggrey-light-graphite-midnight-navy-p-3158.html>>, as of July 18, 2012.)

Next, defendant argues that the total range of a cell tower is nearly 315 square miles;<sup>9</sup> “[e]ven assuming appellant was somewhere within the area of the cell tower . . . , that does not mean he was near Duncan’s body.” A lot of that area, however, was desert.<sup>10</sup> Defendant offered no alternative explanation for his presence in the area; he simply denied being anywhere near Apple Valley on September 20. It was reasonably inferable that he was actually at the crime scene. In any event, as already mentioned, it is irrelevant that the evidence could also be reconciled with a contrary finding. Evidence can be *substantial* even if it is not *conclusive*.

In response to the evidence of consciousness of guilt, defendant argues that he could have been nervous about talking to the police because he knew that Duncan had been found dead in the desert (and perhaps also because he knew that Franke was involved). It is one thing to be nervous; it is a different thing to lie. Lying overwhelmingly suggests that defendant had something to hide.<sup>11</sup> The argument that he

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<sup>9</sup> The testimony at trial was that the maximum range of a cell tower is 10 miles. The area of a circle is pi times the radius squared. Therefore, the maximum total area covered by a cell tower is  $3.14159 \times 10^2$  miles.

<sup>10</sup> A map showing the exact location of both the tower and the body was admitted into evidence. Defendant, however, has not had this exhibit transmitted to us. We must presume that it would support the judgment.

<sup>11</sup> Defendant does not appear to argue that there was insufficient evidence of the intent to aid and abet or of an act of aiding and abetting. If only out of an excess of caution, however, we note that the evidence of consciousness of guilt is substantial evidence that defendant was not a mere bystander.

was lying to protect Franke only begs the question of *how* he knew that Franke was involved. The jury could reasonably infer that he knew because he was there.

Significantly, during the interview, the police never told defendant how Duncan died, and he never asked. He had told the friend who drove him around that the police wanted to talk to him about “a female that was located deceased in the desert.” Similarly, he told police that he had heard that she had been “found . . . out in the desert.” Nevertheless, during the interview, he simply assumed, without being told, that she had been murdered. He accused her roommate. He added, “Whoever the fuck done this shit, man, that’s some low down shit.”

Finally, defendant points to the absence of certain evidence: no DNA; no fingerprints; no murder weapon; etc. But there could *always* be *more* evidence. This is simply irrelevant to whether the evidence that *was* introduced was sufficient.

It was.

#### IV

#### DISPOSITION

The judgment is affirmed.

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RICHLI  
J.

We concur:

RAMIREZ  
P. J.

CODRINGTON  
J.