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Opinion following remand from Supreme Court

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. SAMUEL MOSES NELSON, Defendant and Appellant.	G040151 (Super. Ct. No. 04ZF0072) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Frank F. Fasel, Judge. Affirmed.

Mary Woodward Wells, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Barry Carlton and Elizabeth A. Hartwig, Deputy Attorneys General, for Plaintiff and Respondent.

OPINION ON REMAND

Samuel Moses Nelson appealed from his murder and burglary convictions. He argued the incriminating oral and written statements he made during an interview regarding these crimes were obtained in violation of his Fifth Amendment rights as defined in *Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*). He also requested review of the proceedings relevant to his *Pitchess* motion. (*Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*).)

In a published opinion in this case, *People v. Nelson* (2012) 53 Cal.4th 367, 329 (*Nelson*), our Supreme Court concluded the trial court properly determined that a reasonable officer would not have understood 15-year-old Nelson "to be clearly and unequivocally asserting his *Miranda* rights when he asked to speak to his mother, or when he indicated his relatives did not want him to take a polygraph test without speaking first to his mother or a lawyer, or when he made references to being left alone. Accordingly the investigators were not required to halt the [five-hour] interrogation at any point, and [Nelson's] incriminating statements were admissible at trial." (*Ibid.*) The Supreme Court reversed this court's judgment to the contrary, and the case has been remanded to us "for further proceedings consistent with the view expressed" in the opinion. (*Ibid.*)

The decision of the Supreme Court dealt solely with the *Miranda* issue and did not address the other issue raised by Nelson in this appeal. Accordingly, we adopt and incorporate by reference the Supreme Court's discussion and conclusion Nelson's confessional statements were properly admitted at trial. (*Nelson, supra,* 53 Cal.4th 367.) As we explain more fully below, we conclude, as we did initially, that our review of the record revealed no abuse of discretion with respect to the *Pitchess* motion.

Nelson requested this court review the materials considered by the trial court in camera before denying his *Pitchess* motion. The Attorney General does not

object. (*People v. Mooc* (2001) 26 Cal.4th 1216, 1227-1228 [procedure for review] (*Mooc*).) We have reviewed the sealed reporter's transcript. In ruling on the *Pitchess* motion, the trial court properly asked the court reporter to make a record of the court's questions, comments, and inquiry into the particular files, records, and documents produced by the custodian. (*Mooc*, *supra*, 26 Cal.4th at pp. 1228-1229.) The trial court did not abuse its discretion in finding no discoverable materials. (*Alford v. Superior Court* (2003) 29 Cal.4th 1033, 1039 [standard of review].)

The judgment is affirmed.

O'LEARY, P. J.

WE CONCUR:

ARONSON, J.

IKOLA, J.