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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. GARY LEE BULLOCK, Defendant and Appellant.	A148543 (Humboldt County Super. Ct. No. CR1400054)

INTRODUCTION

A jury convicted defendant Gary Lee Bullock of murder, torture, and other crimes and found true several special circumstance allegations. The court sentenced him to a life sentence without the possibility of parole (LWOP). On appeal, defendant argues the trial court should have suppressed certain statements he made during a police interview after he asked the interviewer, "Can I see a lawyer?" Defendant also argues the evidence adduced at trial was insufficient to support the torture conviction and the torture-murder special circumstance. Finally, defendant contends that Penal Code[1] section 654 bars punishment for both the murder and the torture convictions. We affirm.

STATEMENT OF THE CASE

In 2016 the Humboldt County District Attorney filed a third amended information charging defendant with the murder and torture of Eric Walter Freed. (§§ 187, subd. (a),

[1] Unless otherwise indicated, all further statutory references are to the Penal Code.

206.) The information also charged defendant with residential burglary of an inhabited dwelling place, residential burglary of an inhabited portion of a building, attempted arson, carjacking, and unlawfully taking or driving a vehicle on December 31, 2013. (§§ 459, 664/451, subd. (b), Veh. Code, § 10851, subd. (a).) In addition, the information alleged special circumstances for torture murder, burglary murder, and carjacking murder. (§ 190.2, subds. (a)(18), (a)(17)(G), (a)(17)(L).) The jury found defendant guilty as charged, the special circumstances true, and the murder willful, deliberate, and premeditated. The court sentenced defendant to 12 years six months for the carjacking, residential burglary, and attempted arson convictions. The court stayed imposition of sentence on the Vehicle Code conviction, imposed a consecutive LWOP term for the murder with special circumstances conviction, and a consecutive life term for the torture conviction.

STATEMENT OF FACTS

The Crime Scene

Father Eric Freed's body was discovered on the floor of his rectory by his deacon after Father Freed failed to appear for 9:00 a.m. mass on January 1, 2014.

When the police arrived, they observed signs of forced entry: a wooden gate was broken off its hinges, a window was broken, and the entry door to Father Freed's room on the second floor was damaged and appeared to have been kicked in. Pieces of broken pipe were found near the gate and inside the rectory; pieces of broken wood were also found inside the rectory. A partially burned cigar was resting on a lit burner on the stove. Father Freed's body was wrapped in damp bedding that smelled of alcohol. Three empty whiskey bottles were found nearby. A metal pipe and a wooden stake were found underneath Father Freed's body. A broken and bloody pilsner glass with jagged edges was also found near the body. A piece of wood was embedded in Father Freed's knee. Father Freed's cell phone was destroyed. There were blood spots consistent with spatter

on the entry door upstairs and blood smears elsewhere in the rectory, including in the bathroom, in the shower, on the soap, in the sink, and on wet wipes.

The Autopsy

The causes of death were blunt force head and thoracic injuries and asphyxia by neck compression. In addition, Father Freed suffered injuries from head to toe. There were abrasions, lacerations, and bruises on Father Freed's forehead, cheek, chin, nose, scalp, ear, lip, tongue, and interior of the mouth. Father Freed's tongue was nearly severed. He had a fractured skull and fractured hyoid bones, larynx, laryngeal cartilage, and cricoid cartilage. There were bruises and abrasions on his shoulder, upper arm, chest, abdomen, back, and scapula. Two vertebrae in his lower spine were separated as a result of the tearing of the ligament and compression of one vertebra. There were injuries to his elbow, forearms, hands, fingers, wrist, and legs which could have been defensive wounds. There were abrasions to the knee and thigh, lower legs, and one toe, in addition to a stab wound to one knee.

The pathologist opined that the injuries could have been inflicted with the pipe and wooden slat found at the scene. The broken pilsner glass appeared to have been forced into Father Freed's mouth, cutting the inside of his mouth and "almost completely through the tongue." It takes several minutes to die by asphyxiation. Father Freed could have been awake during the entire ordeal, and the injuries would have been painful.

Defendant's Activity on December 31, 2013/January 1, 2014

At 1:40 p.m. on December 31, 2013, Sergeant Swithenbank of the Humboldt County Sheriff's Office arrested defendant in Redway for being under the influence of drugs and transported him to a sobering cell at the jail in Eureka, about 70 miles away. Defendant was "very agitated, sweating, upset, not making a lot of sense." The Sheriff's Department released defendant about 11 hours later, at 12:42 a.m. on January 1, 2014.

Surveillance video cameras situated around St. Bernard Catholic Church in Eureka showed defendant on the sidewalk in front of the church at 1:07 a.m. on January 1, 2014.

He was also captured on camera at the church's front door, on the sidewalk between the church and the rectory, and at the church's back door.

A security guard called the police to report that a possibly intoxicated man was howling and trying to use the restrooms at the church. Around 2:00 a.m., the police made contact with defendant on the walkway between the church and the rectory. Defendant said he had been arrested for intoxication in Garberville and released from jail about two hours earlier. Defendant showed the police his paperwork from the jail and said he was lost and unable to return home to Garberville. Defendant was dressed in a thin jacket, although it was cold. He did not appear to be drunk or having any mental health issues. The officer gave him directions to the rescue mission, and when the officer left, defendant was headed north towards the mission.

However, within two minutes, defendant was back at the church. Surveillance cameras caught him using his sleeve to wipe fingerprints off the rectory's front door. He is seen at the window of the mechanic room, then sprinting to the ladies' bathroom. Between 3:19 a.m. and 3:24 a.m., defendant is seen breaking the window. Between 6:43 a.m. and 6:47 a.m., the surveillance video showed defendant having an "interact[ion] with a bush" outside the rectory. Next, defendant was shown near the rectory garage.

On January 4, 2014, police found Father Freed's identification card, Bible, briefcase, and some religious artifacts in the river near the Miranda Bridge, a two-minute drive from defendant's mother's house. Father Freed's car, with foliage on top, was found near defendant's mother's home in Redway parked on a skid road. On January 7, 2014, additional cards and keys belonging to Father Freed were found in the river.

Forensic Evidence

Defendant's fingerprints were found on one of the whiskey bottles and a drinking glass in the rectory. Defendant's DNA was found under Father Freed's fingernails, on a

glass vessel, and on the cigar. Father Freed's blood was found on defendant's shirt. Defendant's watch was found at the scene.

Defendant's Jail Calls

Recorded excerpts of calls defendant made to family members from the jail were played for the jury. Defendant told his mother and stepfather the police had him "dead to rights" and told his mother that what she would learn about the crime would "scare the shit out of" her. He told his wife: "I figured I would make my way home by myself, which what a mistake that was."

Defendant did not testify. The defense theory was presented at trial through the testimony of a security guard and a police officer. The defense argued to the jury that defendant was cold and lost and broke into the rectory to get warm; he killed Father Freed in an explosive fit of rage. The defense also presented evidence from defendant's friends, neighbors, stepfather, and law enforcement officers that the day before the killing and afterwards defendant was acting and talking strangely, and that on one prior occasion, when the stepfather suspected defendant was on drugs, defendant seemed "completely whacked and not himself."

In rebuttal, the prosecution offered an excerpt from defendant's interview by police in which he said the detective's theory that he killed the priest " 'cause I was cold?" was "bullshit."

DISCUSSION

Admission of Statements Made by Defendant After He Asked "Can I Have a Lawyer?" Was Proper.

Following the defense case, the prosecutor indicated he intended to present in rebuttal some of the statements defendant made after he asked about a lawyer. The defense moved to exclude the statements on the ground there was no "actual cessation in the interrogation" once defendant invoked his right to counsel. After viewing the video recording of the interview, the trial court found defendant did not invoke his right to

counsel: "[Defendant] did state, quote, Can I see a lawyer, closed quote. Investigator Harpham then immediately stood up, appearing to be preparing to terminate the interview; however, clearly, [defendant] kept on talking. Under the totality of the circumstances I find [defendant] did not then invoke his right to counsel."

Defendant contends this was error, and his statements to Detective Harpham should have been suppressed because the detective failed to stop questioning him after he unambiguously and unequivocally invoked his right to counsel.[2] (*Edwards v. Arizona* (1981) 451 U.S. 477, 484–485 (*Edwards*).) We disagree defendant's question, "Can I see a lawyer?" was an unambiguous and unequivocal invocation of his right to counsel.

We apply the following standard of review. "In reviewing the trial court's denial of a suppression motion on *Miranda*[3] and involuntariness grounds, ' " 'we accept the trial court's resolution of disputed facts and inferences, and its evaluations of credibility, if supported by substantial evidence. We independently determine from the undisputed facts and the facts properly found by the trial court whether the challenged statement was illegally obtained.' " ' [Citations.] Where, as was the case here, an interview is recorded, the facts surrounding the admission or confession are undisputed and we may apply independent review." (*People v. Duff* (2014) 58 Cal.4th 527, 551.)

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[2] The prosecutor did not introduce the entire statement but only the following excerpt: "[Defendant]: Why in the fuck would I go murder someone? You're sayin' 'cause I was cold? Bull shit. I was in jail a month before that.

"[Detective]: No—no.

"[Defendant]: And I walked around the streets and got in with a hotel and I called my mom and got a room.

"[Detective]: You . . .

"[Defendant]: I got picked up the next day by my mom—by my wife. I tried to get it this time she told me to go down to some hotel. I couldn't find it 'cause I'm not familiar with (Eureka) and I didn't fuckin' murder anybody. I cannot remember I'm tellin' you man. I'm tellin' you the fuckin' truth."

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

Defendant's Request for a Lawyer.

An interview lasting approximately three hours and 23 minutes was conducted by Detective Harpham and Investigator Burke. After defendant was brought into a room furnished with a table and some chairs, his handcuffs and bags covering his hands were removed. Defendant was asked if he understood his rights; he said he did. During the first hour, questioning was desultory while defendant undressed, was photographed, put on an orange jumpsuit, and submitted to processing for DNA samples. During the second hour, questioning intensified. At first, defendant said he could not remember anything after he went into the bathroom at the church. After more questioning, he admitted remembering he broke the window in the rectory.

After one hour and 57 minutes, Harpham and Burke stepped out of the interview room and a person named Wayne, whom defendant appeared to know, stepped in. Wayne continued questioning defendant for approximately another 40 minutes, until Harpham and Burke returned.

Towards the end of the third hour, the following exchange took place:

"[Detective]: You're gonna feel better . . .

"[Defendant]: . . . I can't remember.

"[Detective]: . . . when you admit to it. And the people in this city are gonna look better—and . . . look at you in a different way. But you are gonna go to jail—you're gonna go to prison as that mother fucker unrepentant [whelp] that killed that priest.

"[Defendant]: I know and if I could jus' remember I would.

"[Detective]: Don't you understand how it is—it would be?

"[Defendant]: I get all these fuckin' weird dreams.

"[Detective]: Don't you know how different it would be to go to—to . . .

"[Defendant]: I'm not gonna say anything that I did until . . .

"[Detective]: . . . take your sins and take your . . .

"[Defendant]: . . . I can't remember sir. Final. Can I see a lawyer? [**Harpham stands up and starts to turn away.**] Why—I—give me a chance to sleep for a little? I'll tell you guys if I find out I swear. I'm not fuckin' lyin'. I wasn't [**Harpham sits down**] fake cryin' when I came in here. Look at me I'm fuckin' beat up.

"[Detective]: Yeah? All right look.

"[Defendant]: You tell me I wasn't cryin' Are you kidding me?

"[Detective]: Yeah. Yeah. I—I didn't see.

"[Defendant]: Come on.

"[Detective]: No I did not see tears.

"[Defendant]: Okay fine. So untrue. So fuckin' untrue.

"[Detective]: And . . . you understand I mean you understand what my job is.

"[Defendant]: Yeah, your job is to get a . . .

"[Detective]: I—I don't know you for . . .

"[Defendant]: . . . confession out of me.

"[Detective]: I . . . don't know you for (him). 'Kay.

"[Defendant]: So I . . .

"[Detective]: I never met you before.

"[Defendant]: I can't remember.

"[Detective]: I wish we weren't here. I wish this wasn't . . .

"[Defendant]: I do too damnit.

"[Detective]: (unintelligible)

"[Defendant]: Fuck.

"[Detective]: But now we have to—everybody has to deal with this. Everybody has to grow up . . .

"[Defendant]: I jus' wanna see my family."

" ' "As a prophylactic safeguard to protect a suspect's Fifth Amendment privilege against self-incrimination, the United States Supreme Court, in *Miranda,* required law

enforcement agencies to advise a suspect, before any custodial law enforcement questioning, that 'he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires.' [Citations.]" ' [Citation.] [¶] ' " '[I]f the accused indicates in any manner that he wishes to remain silent or to consult an attorney, interrogation must cease, and any statement obtained from him during interrogation thereafter may not be admitted against him at his trial' [citation] . . . ." [Citation.] "Critically, however, a suspect can waive these rights." ' " (*People v. McCurdy* (2014) 59 Cal.4th 1063, 1085–1086; see *People v. Stitely* (2005) 35 Cal.4th 514, 535.)

"Once a defendant has waived his or her right to counsel, . . . if that defendant has a change of heart and subsequently invokes the right to counsel during questioning, officers must cease interrogation unless the defendant's counsel is present *or the defendant initiates further exchanges, communications, or conversations*. [Citation.] For a statement to qualify as an invocation of the right to an attorney, however, the defendant 'must unambiguously request counsel. . . . [H]e must articulate his desire to have counsel present sufficiently clearly that a reasonable police officer in the circumstances would understand the statement to be a request for an attorney.' " (*People v. Cunningham* (2015) 61 Cal.4th 609, 645–646 (*Cunningham*), italics added; see *Davis v. United States* (1994) 512 U.S. 452, 459; *Edwards, supra*, 451 U.S. at pp. 484–485; *People v. Neal* (2003) 31 Cal.4th 63, 67; *People v. Storm* (2002) 28 Cal.4th 1007, 1021; *People v. Bradford* (1997) 14 Cal.4th 1005, 1033–1034.) " 'An accused "initiates" ' further communication, exchanges, or conversations of the requisite nature 'when he speaks words or engages in conduct that can be "fairly said to represent a desire" on his part "to open up a more generalized discussion relating directly or indirectly to the investigation." ' " (*People v. San Nicolas* (2004) 34 Cal.4th 614, 642; accord, *People v. Waidla* (2000) 22 Cal.4th 690, 727.)

After careful review of the transcript and recording of defendant's interview, we independently agree with the trial court that defendant's invocation of counsel was neither unambiguous nor unequivocal. As the trial court correctly observed, defendant never stopped talking. In fact, he hardly took a breath when Detective Harpham stood up. The recording shows that as soon as defendant said the word "lawyer," Harpham stood up and started to turn away from him. But before the detective could complete the motion, defendant glanced up, uttered his next word, and kept on talking. Harpham stood, waiting to hear what defendant would say next, before slowing sitting down again. It looks as if defendant did not want Harpham to leave or stop listening to him. Defendant immediately returned to themes he had voiced repeatedly from the inception of the interview, especially when questioning became too intense or pointed: the sheriff deputies had beaten him up at the jail; he was in pain; he was tired and needed to sleep; he would tell the officers when he remembered something. Viewed in context of the entire interview, we have no trouble concluding that " 'a reasonable police officer in the circumstances" would not have understood defendant's question to be an unequivocal request for an attorney, as opposed to a tactic to get the interrogator to back off in intensity while maintaining the interrogator's interest in listening to what he might say. (*Cunningham, supra,* 61 Cal.4th at p. 646.)

Our conclusion is reinforced by the observation that defendant never attempted to assert his right to counsel again even when, a short time later, Detective Harpham told him: "You have the right [through] your attorney to see all the pictures," but not the right to see the crime scene.

Defendant argues his talking did not reinitiate the interview because his "comments were directed solely at ending the interrogation." The videotape refutes this argument. Defendant's return to the type of comments he made at several points earlier in the interview about his treatment at the hands of the sheriff's deputies, his pain, his need to sleep, and his promise to tell them what he did when he remembered, suggests he

was trying to keep the conversation going, not end it. In the context of this interview, the content of defendant's comments would not have clearly signaled, to a reasonable officer, that defendant wanted to have a lawyer present before he continued.

In any event, the question whether defendant initiated the ongoing dialogue after invoking counsel is predominantly a factual mixed question which we review for substantial evidence. (*People v. Mickey* (1991) 54 Cal.3d 612, 649 (*Mickey*).) Here, assuming for argument's sake that defendant unambiguously invoked counsel, substantial evidence supports the trial court's finding that he immediately reinitiated the conversation. No error appears.

Substantial Evidence Supports the Torture Conviction and the Torture-murder Special Circumstance Finding.

Defendant argues the torture conviction and the murder-torture special circumstance finding violate his due process rights because they are not supported by substantial evidence. Defendant acknowledges the evidence is "certainly sufficient to prove that [defendant's] assaultive acts toward the victim caused pain and suffering" but maintains "the prosecution failed to present evidence to prove that [defendant] committed the assaultive acts with the intent to inflict extreme or severe pain." We disagree.

The standard of review for a sufficiency of the evidence claim as to a special circumstance is the same as the standard for evaluating the evidence of conviction: "whether, when evidence that is reasonable, credible, and of solid value is viewed 'in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the allegation beyond a reasonable doubt.' [Citations.] The standard is the same under the state and federal due process clauses. [Citation.] We presume, in support of the judgment, the existence of every fact the trier of fact could reasonably deduce from the evidence, whether direct or circumstantial." (*People v. Clark* (2016) 63 Cal.4th 522, 610; see *People v. Cole* (2004) 33 Cal.4th 1158, 1229.)

To prove the crime of torture, the prosecution must show a defendant, "with the intent to cause cruel or extreme pain and suffering for the purpose of revenge, extortion, persuasion, or for any sadistic purpose, inflicts great bodily injury as defined in Section 12022.7 upon the person of another . . . . [¶] The crime of torture does not require any proof that the victim suffered pain." (§ 206.) " 'Courts have interpreted intent to inflict "cruel" pain and suffering as intent to inflict extreme or severe pain.' " (*People v. Odom* (2016) 244 Cal.App.4th 237, 246 (*Odom*).)

To prove the special circumstance of torture murder, the prosecution must show that "[t]he murder was intentional and involved the infliction of torture." (§ 190.2, subd. (a)(18).) The prosecution must prove the defendant harbored "a torturous intent, i.e., an intent to cause extreme pain or suffering for the purpose of revenge, extortion, persuasion, or another sadistic purpose." (*People v. Hajek and Vo* (2014) 58 Cal.4th 1144, 1187 (*Hajek*), overruled on another point in *People v. Rangel* (2016) 62 Cal.4th 1192, 1216; *Odom*, *supra*, 244 Cal.App.4th at p. 247.)

In both cases, "[t]he intent to torture 'is a state of mind which, unless established by the defendant's own statements (or by another witness's description of a defendant's behavior in committing the offenses), must be proved by the circumstances surrounding the commission of the offense [citations], which include the nature and severity of the victim's wounds.' [Citation.] 'We have, however, cautioned against giving undue weight to the severity of the wounds' [citation]; severe injuries may also be consistent with the desire to kill, the heat of passion, or an explosion of violence." (*People v. Mungia* (2008) 44 Cal.4th 1101, 1137, italics omitted; *Odom*, *supra*, 244 Cal.App.4th at p. 247.) Nevertheless, evidence that the defendant intentionally inflicted nonlethal wounds on the victim may demonstrate the requisite " ' "sadistic intent to cause the victim to suffer pain in addition to the pain of death." ' " (*Hajek*, *supra*, 58 Cal.4th at p. 1188, italics omitted; *People v. Mungia*, at pp. 1137–1138, and cases cited therein.)

Here, defendant argues that since there was no direct eyewitness evidence or incriminating statement from defendant about his intent, the circumstances "at most shows an explosion of violence or a desire to kill." That argument might find traction if defendant had merely beaten Father Freed over his entire body, but defendant also crushed his windpipe and several vertebrae in the course of strangling him, nearly severed Father Freed's tongue with a broken pilsner glass, and impaled Father Freed's knee with a wooden slat. A jury could rationally infer beyond a reasonable doubt from these additional acts, plus the overall extent of the injuries Father Freed suffered, that defendant gratuitously inflicted the nonfatal wounds with the sadistic intent to cause Father Freed extreme pain in addition to the pain of death. Substantial evidence supports both the torture conviction and the torture-murder special circumstance.

Consecutive Sentences for Both Murder and Torture Did Not Violate Section 654.

Defendant contends the trial court violated section 654 by imposing consecutive life sentences for both murder and torture convictions, because there is no evidence to support the trial court's implicit finding that the torture and murder had separate objectives. We disagree.

" ' "[I]ntent and objective are factual questions for the trial court; [to permit multiple punishments,] there must be evidence to support [the] finding the defendant formed a separate intent and objective for each offense for which he was sentenced." ' " (*People v. Capistrano* (2014) 59 Cal.4th 830, 886; accord, *People v. Jackson* (2016) 1 Cal.5th 269, 354.) We review the court's implicit or explicit factual finding whether there was a single criminal act or a course of conduct with a single criminal objective for substantial evidence. (*People v. Coleman* (1989) 48 Cal.3d 112, 162.) That means we view the sentence in the light most favorable to the judgment and presume the existence of every fact the trial court could reasonably deduce from the evidence. (*People v. Jones* (2002) 103 Cal.App.4th 1139, 1143.)

Section 654 provides in pertinent part: "(a) An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision." However, because "[f]ew if any crimes . . . are the result of a single physical act," our Supreme Court in *Neal v. State of California* (1960) 55 Cal.2d 11 (*Neal*) interpreted section 654 as applying " 'not only where there was but one "act" in the ordinary sense . . . but also where a course of conduct violated more than one statute and the problem was whether it comprised a divisible transaction which could be punished under more than one statute within the meaning of section 654.' " (*Neal*, at p. 19, disapproved in part in *People v. Correa* (2012) 54 Cal.4th 331, 334; accord, *People v. Capistrano, supra*, 59 Cal.4th at p. 885.) "[I]f all of the offenses were merely incidental to, or were the means of accomplishing or facilitating one objective, defendant may be found to have harbored a single intent and therefore may be punished only once. [Citation.] [¶] If, on the other hand, defendant harbored 'multiple criminal objectives,' which were independent of and not merely incidental to each other, he may be punished for each statutory violation committed in pursuit of each objective, 'even though the violations shared common acts or were parts of an otherwise indivisible course of conduct.' " (*People v. Harrison* (1989) 48 Cal.3d 321, 335.)

The parties agree, and we concur, that the murder and torture of Father Freed were not accomplished by "a single physical act" but rather by a series of assaultive acts occurring close in temporal proximity. (*People v. Corpening* (2016) 2 Cal.5th 307, 313 [test for whether defendant committed "a single physical act" under § 654 "depends on whether some action the defendant is charged with having taken separately completes the actus reus for each of the relevant criminal offenses."].) Therefore, the issue is whether substantial evidence in the record supports the conclusion that defendant "harbored 'multiple criminal objectives,' which were independent of and not merely incidental to

each other," such that "he may be punished for each statutory violation committed in pursuit of each objective, 'even though the violations shared common acts or were parts of an otherwise indivisible course of conduct.' " (*People v. Harrison*, *supra*, 48 Cal.3d at p. 335.)

The causes of Father Freed's death were (1) blunt force head and thoracic trauma and (2) asphyxia by neck compression. We need not again recite the details of the wounds Father Freed suffered to his entire body, including the near severance of his tongue, which were inflicted with no fewer than three weapons: a pipe, a wooden stake, and a pilsner glass. To kill Father Freed it was not necessary to inflict those injuries or to nearly sever his tongue with a beer glass. In our view, the trial court could reasonably infer from the extent and pattern of wounds that torture was not merely the means of killing Father Freed, and that torture was not merely incidental to the killing of Father Freed. Rather, the severance of the tongue and other injuries were inflicted for the separate objective of causing extreme pain. Substantial evidence supports the trial court's ruling.

DISPOSITION

The judgment is affirmed.

_____
Dondero, J.

We concur:

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Margulies, Acting P. J.

_____
Banke, J.