IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA

Plaintiff/Respondent,

v.

SONNY ENRACA

Defendant/Appellant

Supreme Court No.
Crim. S080947

Riverside County
Superior Court
No. CR-60333

APPELLANT'S SUPPLEMENTAL REPLY BRIEF

Appeal from the Judgment of the Superior Court
Riverside County
Honorable W. Charles Morgan, Judge

PAUL J. SPIEGELMAN
Attorney at Law
P.O. Box 22575
San Diego, CA 92192-2575
Telephone: (858) 452 7121
State Bar No. 63705
Attorney for Appellant

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INTRODUCTION

The issue before this Court is whether the trial judge erred when he found that the prosecution met its burden of demonstrating that a twenty-two-year-old Filipino immigrant's incriminating statements were made voluntarily and knowingly even though the statements had been obtained through unlawful means: (1) leading the young immigrant with no prior experience with law enforcement to believe that "his only chance in life" was to make a statement to the police before arraignment and that he could not see a lawyer before arraignment which was at least 48 hours away; (2) violating treaty obligations by not informing the young man of his right to consult with consular officials and by not informing his consulate of his arrest on murder charges; (3) Detective Schultz deliberately badgering him to talk to detectives without counsel present after he invoked his right to remain silent; and (4) following Schultz's harsh, confrontational "bad cop" interrogation both pre- and post-invocation with Detective Spidle's friendly "good cop" interaction post-invocation to get him to talk without counsel present.. There is little dispute about the underlying facts or over the principles of law applicable to in-custody interrogations. This Court is thus faced with the task of applying settled principles of constitutional law to essentially undisputed facts, one for which review is *de novo.* As demonstrated in Appellant's Supplemental Brief, the trial judge erred because the totality of these circumstances demonstrate that Sonny's post-invocation statements were neither voluntary, nor knowing.

In its Supplemental Brief, respondent seeks to avoid this ineluctable conclusion by arguing that (I) even though Detective Schultz admitted after Sonny invoked, Schultz deliberately sought to "give Enraca an opportunity

to speak with detectives without counsel" (RSB 8), such badgering was not "reasonably likely to elicit an incriminatory response" (*Ibid.*) and only operated to give Sonny a "choice." (ASB 8 citing 5 RT 735; (II) because Sonny made his statement to Spidle, not Schultz, Schultz's deliberate and unlawful badgering "had no effect" and Sonny's statements to Spidle were "an intervening act breaking any causal connection to Schultz's last statement." (RSB 9); (III) this Court should ignore the classic bad-cop-good-cop technique and its documented effect on Sonny because there was no evidence that Schultz and Spidle explicitly agreed to coordinate their tactics. (IV) In making these supplemental arguments, respondent ignores the clear violations of Sonny's treaty rights, presumably relying on Respondent's Answer to Amicus Brief by the Republic of the Philippines which inaccurately suggests that the trial judge found no *factual* linkage between the admitted treaty violations and Sonny's statements to Spidle and which argues that the United States Supreme Court's ruling in *Sanchez-Llamas* that violations of article 36 of the Vienna Convention be raised "as part of a broader challenge to the voluntariness of his statement to the police" (*Sanchez-Llamas v. Oregon* (2006) 548 U.S. 331, 350), only applies to situations where there is "a truly uncomprehending detainee in need of consulate assistance to understand the rights-waiver required for custodial interrogation." (Respondent's Answer To *Amicus* Brief by the Republic of the Philippines, p.6) Appellant demonstrates below that each of these arguments lack merit and that Sonny's statements to Spidle were the unlawful fruit of repeated constitutional and treaty violations.

ARGUMENT

I. SCHULTZ'S BADGERING OF SONNY AFTER SONNY INVOKED HIS RIGHT TO COUNSEL WAS INTENDED TO, WAS REASONABLY LIKELY TO, AND ACTUALLY DID CAUSE SONNY TO MAKE INCRIMINATING STATEMENTS WITHOUT A LAWYER PRESENT.

A. Schultz Crossed the Bright Line Drawn by *Edwards*

Respondent acknowledges that Schultz's final words to Sonny – "Now I suggest ... for the next 48 hours, that you deeply consider that." (21 CT 5617) – were intended to give Sonny "the opportunity to speak with detectives without counsel." (RSB 8). Nonetheless, respondent disputes that Schultz "*admitted* that his post-invocation statement to Enraca were [sic] calculated to get him to speak without an lawyer there"(RSB 8 [emphasis added]) and argues that instead these post-invocation words were meant to get him "to speak to the detectives without counsel, but only [i]f that was his choice." (*Ibid.* quoting 5 RT 735.) Respondent is apparently disputing whether Schultz intended to violate *Edwards* when he admittedly urged Sonny to speak without counsel. As discussed below, Schultz's specific intent to violate the law is not at issue. No matter how respondent tries to spin it, speaking the words Schultz spoke with the intent to induce a suspect who has already invoked his right to remain silent to nonetheless speak without counsel present was a clear violation of the letter and the spirit of *Edwards* even if Schultz did not believe or fully understand that what he was doing was illegal:

> The bright-line rule of *Edwards* was "designed to protect an accused in police custody from being badgered by police officers" in an effort to wear the suspect down and persuade him to incriminate himself notwithstanding his earlier request for counsel's assistance. *Oregon v. Bradshaw* (1983) 462 U.S. 1039, 1044

People v. Storm (2003) 28 Cal.4th 1007, 1024 [emphasis omitted.). And as the U.S. Supreme Court further noted:

> In the absence of such a bright-line prohibition, the authorities through 'badger[ing]' or 'overreaching' - explicit or subtle, deliberate or unintentional - might otherwise wear down the accused and persuade him to incriminate himself notwithstanding his earlier request for counsel's assistance.

(*Smith v. Illinois* (1984) 469 U.S. 91, 98.) Thus, Schultz's words were by themselves a violation of *Edwards* – seeking to wear Sonny down and get him to talk by placing psychological pressure on him to make statements without counsel present, talking to him as you would talk "to your kids when they do something wrong."(IV RT 735.)

But it was not these words and deeds alone which were used to exert pressure on Sonny. As respondent candidly concedes, "in making the statement to Enraca, Schultz was suggesting that Sonny *consider the entire interview, including Enraca's denial of involvement."* (RSB 8 [emphasis added].) Included in the "entire interview" was critical pre-invocation interrogation that was incorporated by reference in Schultz's post-invocation coercion: Schultz told Sonny that he had evidence that Sonny was the shooter and that "your only chance in life is to come up with exactly what happened" (21 CT 5612), and he told him that "*you need to have some type of explanation so we could go to the DA and talk about either manslaughter or I don't know*." (21 CT 5613.) Moreover, these statements were all made in the context of Schultz telling Sonny that he would not get to see a lawyer in the critical 48-hour period before the district attorney decided what to charge Sonny with and Spidle reiterating that time frame.

B. Sonny Was Not Given a Free Choice by Schultz and Spidle

Respondent seeks to avoid the consequences of Schultz's crossing of the bright line against badgering suspects after they invoke their rights by arguing that all that Schultz was doing was giving Sonny "his choice." (RSB 8.) But the choice as Schultz misleadingly foisted on Sonny was a false one: between (1) remaining silent and "going to jail for double homicides" or (2) giving "some type of explanation so we could go the DA and talk about ... manslaughter." This typical car salesman's use of restricted choice (do you want the "red car or the blue one?") is a well-known gambit used to close deals. Both Schultz and the car salesman left out a third choice – doing neither (in Sonny's case talking to law enforcement only with a lawyer present). Whatever the legality of using such tactics before a target invokes his rights, this tactical manipulation clearly crosses the bright line set by *Edwards* once the suspect invokes those rights.

C. Shultz Not Only Should Have Known, But Actually Intended That His Words Would Be Reasonably Likely Lead To An Incriminatory Response.

Respondent further argues that because prior to badgering Sonny to talk, Schultz told Sonny to "'shut your mouth' and he ... did not want to hear another word out of Enraca (5 RT 721)" (RSB p. 8), the invitation to "speak with detectives without counsel present"(*ibid.*), which he made *immediately after* telling Sonny to shut his mouth, was not an "invitation" which Schultz "should have known was reasonably likely to elicit an incriminatory response." (*Ibid.* [emphasis added].) The problem with this argument is that Schultz candidly admitted that he intended his statement to induce Sonny to confess, so that he not only "should have known," but

actually planned that his statement would result in a confession.

The "reasonably likely" standard is meant to assure that the police not "be held accountable for the unforeseeable results of their words or actions." (*Rhode Island v. Innis* (1980) 446 U.S. 291, 301-302.) Where a law enforcement officer deliberately seeks to get the suspect to confess after the suspect invokes, he can hardly claim that the hoped-for response of the suspect was unforeseeable. As the Court said in *Innis*, even though the reasonably likely standard "focuses primarily on the perceptions of the suspect" (446 U.S. at 201):

> This is not to say that the intent of the police is irrelevant, for it may well have a bearing on whether the police should have known that their words or actions were reasonably likely to evoke an incriminating response. In particular, where a police practice is designed to elicit an incriminating response from the accused, it is unlikely that the practice will not also be one which the police should have known was reasonably likely to have that effect.

(441 U.S. at 301, fn. 7.) Schultz not only should have known what he was doing, he did know what he was doing – using psychological pressure on Sonny to badger him into talking after he invoked.

D. The Coercive Tactics Used Here Distinguishes This Case From *People v. Sapp*

Respondent's reliance on *People v. Sapp* 31 Cal.4th 240, 264, 267-269 is misplaced. As this Court described the situation in *Sapp*,

> After a two-hour dinner break, Detective Tye talked to defendant for about another half-hour, at which point defendant said he "wanted to have an attorney." Tye gave defendant his card and told him to "think about it overnight," adding that before the homicide investigators could again talk to defendant *with or without an attorney being present*, defendant would have to "get in contact" with them.

(31 Cal.4th at 264 [emphasis added].) The situation in *Sapp* could not be more different from the one here. Defendant in *Sapp* was not physically threatened as Sonny was here (Schultz warned Sonny that if he tried to escape, "Your [sic] gonna think the WWF [World Wrestling Federation]'s Santa Claus" (21 CT 5598A)); nor was Mr. Sapp verbally abused and cursed at as Sonny was here ("I'm about had it up to here with you cuz you're full of shit" (21 CT 5616)); nor was Mr. Sapp called a liar as Sonny was here ("Your [sic] a liar. You're a flat liar" (21 CT 5612)); nor was Mr. Sapp, told "his only chance in life" was to talk without counsel present (21 CT 5612) as Sonny was; nor was he ordered to shut his mouth or spoken to as you would when *"talking to your kids when they do something wrong*." as Sonny was. (IV RT 735:21-22.) Moreover, Sapp was given accurate information that he could chose to speak with law enforcement "with or without an attorney being present," whereas Sonny was twice told that he could not see an attorney until arraignment when it was suggested to him that "his only chance in life" was to explain what happened to police officers before the district attorney filed charges; he was never told that he could talk to officers with a lawyer present. Defendant in *Sapp* was a convicted felon fully familiar with the criminal justice system -- not a foreign national having his first experience with the U.S. justice system who was denied access to his consulate. Sapp was invited to "think about it overnight" and was neither tricked nor threatened nor misled, whereas Sonny was subjected to words which were intended to get him to talk without counsel there and make him feel like a naughty child and mislead him into believing that "his only chance in life" was to speak before he could get counsel. Finally, Sapp was allowed to go back to his cell and did not make a statement for 24 hours, whereas Sonny was passed along

immediately to Detective Spidle who played good cop to Schultz's bad cop and slowly reeled Sonny in as an experienced fisherman would boat a hundred-pound fish on 20-pound line. *Sapp* is thus nothing like the instant case.

II. SONNY'S STATEMENTS TO SPIDLE WERE A DIRECT RESULT OF SHULTZ'S BADGERING

A. Sonny's Statements Resulted From Schultz's Badgering Within Minutes. Despite the enormous differences between *Sapp* and the instant case, respondent also seeks to rely on *Sapp* for the proposition that a defendant's actions in seeking out police officers can be an independent intervening act which breaks the chain of causation from an earlier police impropriety. (See RSB p. 9 ["Enraca's decision to engage Spidle in conversation was an intervening act breaking any causal connection to Schultz's last statement"].) Respondent's argument is not supported by the facts. The chain of causation between Schultz's direction to Sonny that he "deeply consider" talking to law enforcement without a lawyer present and Sonny's statements to Spidle is clear both in the proximity to Shultz's statement and in Sonny's explanation of why he talked to Spidle. Unlike Mr. Sapp, who had 24 hours and no pressure before he spoke with law enforcement again, Sonny was talking to Spidle within minutes of Shultz's post-invocation badgering. Sonny was clearly responding to the stark and misleading choice that Schultz left him when he told Sonny to deeply consider talking to police without an attorney there or face prosecution for double homicides, and to the psychological pressure Schultz put on him. Spidle presented a completely different atmosphere by not only granting Sonny's request to speak with his girlfriend, but actually dialing the number for him. After Sonny got off the phone with his girlfriend, the first thing he

did was to ask Spidle when he would get to see his lawyer (IV RT 744:8-11). This is clear evidence that Sonny was checking Schultz's representation that to him that he could not see a lawyer for 48 hours. When Spidle told him that it could be 48 to 72 hours before he could see a lawyer, and he would only get to see a lawyer "if he is charged with a crime," he confirmed Schutlz's injunction that Sonny's "only chance in life" was to give his explanation. Only then did Sonny begin talking to Spidle about the crime.

Rather than informing Sonny that he had time to think about whether to speak with law enforcement or letting him know that he could meet with law enforcement after counsel was appointed or letting him know that he could consult with the Philippine Consulate, Spidle's response dovetailed neatly with Schultz's badgering. Sonny was led to believe that talking to law enforcement then was his "only chance in life." Had Spidle done what the officers in *Sapp* did and given Sonny time alone and away from the pressure created by Schultz and had Spidle followed the law and let Sonny know that he had a right to consult the Philippine Consulate, there might be a credible argument that the chain of causation between Schultz's unlawful pressure and Sonny's interaction was broken. But that was not what happened here. Denied any contact with a supportive professional (appointed counsel or consular official), pressured by the false choice of needing to talk in the next 48 hours without counsel present or risk losing his "only chance in life" and by the psychological tactic which Schultz indicated he deliberately used – talking to Sonny as you would your kids when they did something wrong – Sonny turned to the "good cop," Detective Spidle, and told his side of the story. The link between Schultz's badgering and Sonny's statement to Spidle is clear from Sonny's answer to

Spidle as to why he spoke to Spidle – when Spidle asked Sonny why he talked to Spidle, Sonny replied that Detectives Schultz and Horton were "assholes" (IV RT 761:23-762:6), but Spidle gave him "a lot of respect." (IV RT 762:15-25.)

B. Sonny's Words Demonstrate A Link To Schultz' Badgering.

Respondent tries to muddy the waters by parsing Sonny's further explanation of why he spoke to Spidle to suggest that Sonny made a choice to speak unrelated to Schultz's post-invocation badgering. But Sonny's words do not support respondent's spin: Sonny's words echoed what Schultz had told him. Sonny told Spidle " I just got to face it. I am caught, you know.... I might as well let you know the real story." (RSB, p.13 quoting 5 RT 756 and 761.) Letting them know the real story, his side of the story, responded directly to the whole tenor of the Schultz interrogation which was "Sonny, we have you cold" (21 CT 5614) and Schultz's injunction that "your only chance in life is to come up with exactly what happened so we can make sense of what happened here" (21 CT 5612) and "you need to have some explanation so we could go the DA and talk about ... manslaughter." (21 CT 5613.) Moreover, in closing the deal to get Sonny to talk, Spidle promised Sonny that Spidle would tape record a statement made by Sonny and *take it to the District Attorney*. (IV RT 749:26 to 750:6 [emphasis added]) dovetailing precisely with Schultz's earlier remarks about talking to the DA about manslaughter. Thus, Sonny's words demonstrate that Schultz's pressure had begun pre-invocation, but as respondent admits, carried forward after invocation by Schultz's command to "deeply consider" talking without a lawyer present. (See RSB p. 8 conceding that "In making this statement to Enraca, Schultz was suggesting that Enraca consider the entire interview".) The chain of causation from

Schultz's post-invocation badgering to Spidle's good-cop demeanor to Sonny's statements is clear and unbroken. As the United States Supreme Court and this Court agree, "The bright line rule of *Edwards* was 'designed to protect an accused in police custody from being badgered by police officers' in an effort to wear the suspect down and persuade him to incriminate himself notwithstanding his earlier request for counsel's assistance." (*People v. Storm supra*, 28 Cal.4th at 1024 quoting *Oregon v. Bradshaw*, *supra,* 462 U.S. at 1044.) The record makes it clear that Schultz's pre-invocation bad-cop tactics, carried forward by his post-invocation badgering and supplemented by Spidle's good-cop inducements wore Sonny down in clear violation of *Edwards, Bradshaw,* and *Storm.*

III. EXPRESS COORDINATION BETWEEN SCHULTZ AND SPIDLE IS IRRELEVANT BECAUSE SHULTZ'S BULLYING TACTICS AND *EDWARDS* VIOLATIONS COMBINED WITH SPIDLE'S SYMPATHETIC MANNER COERCED SONNY TO TALK TO SPIDLE WITHOUT A LAWYER PRESENT, NO MATTER WHAT THE TWO DETECTIVES ACTUALLY AGREED UPON

Respondent seems to argue that the lack of any direct evidence of explicit agreement between Schultz and Spidle to play the bad-cop-good-cop roles is somehow relevant to these issues, but never articulates how. While it is true that there is no direct evidence that Schultz and Spidle agreed to the scenario they carried out (though the perfect fit between the two is circumstantial evidence of agreement), the issue before this Court is not what they agreed upon or even what they intended. It is the effect on Sonny that is crucial. As the United States Supreme Court has said "the determination of whether an action is reasonably likely to elicit an incriminating response focuses primarily on the perceptions of the suspect, rather than the intent of the police." *(Rhode Island v. Innis, supra,* 446 U.S.

at 301.) Respondent seems to argue that because the form of pressure used by them was not in the form of explicit questioning (e.g. that Schultz's final words were not a question but a direction and that Spidle only responded to statements or questions from Sonny) that what happened was not interrogation. But again, *Innis* makes clear that "the term 'interrogation' under *Miranda* refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect." (*Id.* at 300-301.) Here, as discussed in point II above, Schultz's post-invocation words, incorporating by reference all of the pre-invocation confrontations and supplemented by Spidle's good-cop role, were the functional equivalent of the kind of pressure that the *Edwards* bright line prohibits.

IV. *SANCHEZ-LLAMAS REQUIRE*D THE TRIAL JUDGE TO CONSIDER TREATY VIOLATIONS IN RULING ON VOLUNTARINESS; HAD HE DONE SO, HE WOULD HAVE CONCLUDED THAT DENYING SONNY ACCESS TO CONSULAR OFFICIALS, TOGETHER WITH OTHER VIOLATIONS OF HIS RIGHTS, RENDERED SONNY'S STATEMENTS INVOLUNTARY.

A. It Is Undisputed That Treaty Violations May Be Raised As Part of Challenge To The Voluntariness Of A Statement to Police.

There is no dispute that the United States Supreme Court has ruled that "[a] defendant can raise an article 36 claim as part of a broader challenge to the voluntariness of his statement to the police." *(Sanchez-Llamas v. Oregon, supra,* 548 U.S. at 350; Respondent's Answer to Amicus Brief, p. 3; ARB, p. 20.) Nor is there any dispute that Detectives Schultz and Spidle knew that Sonny was a Philippine national and that they

thus each violated the Vienna Convention by not informing Sonny of his rights to consult with consular officials; nor can there be any dispute that they also violated the Consular Convention Between the United States of America and the Philippines, Mar. 14, 1947, U.S.-Phil, 62 Stat 1593 not only by failing to advise Sonny of his rights, but also by failing to immediately advise the Philippine Consulate that Sonny had been arrested on a murder charge. (See Respondent's Answer To *Amicus Curiae* Brief By The Republic of the Philippines [Hereinafter "RAAB"], p.3 (Vienna Convention violated "essentially conceded"); *Id.* at pp.1-2 fn.1 (Bilateral Convention has identical requirement.)[1]

B. The Treaty Violations Played An Important Role In Coercing Sonny. As this brief has already discussed, the violations of the Vienna Convention and the Bilateral Convention by both detectives came at the critical time when Detective Schultz sought to use Sonny's projected 48-hour isolation from legal counsel as a weapon to coerce Sonny into talking. Rather than inform Sonny of his rights to consult the Philippine Consulate when Sonny asked each of them when he would get to see his lawyer,

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[1] Respondent erroneously claims that "*amicus* does not assert that there are any greater rights and obligations under the Bilateral Convention." In fact, as the *Amicus* clearly and accurately asserts, the Bilateral Convention, art. 7(2) requires that consular officers "shall be informed *immediately* whenever nationals of their country are under ... arrest ... and they shall ... be permitted without delay to visit and communicate with any such national." (*Amicus* Brief, p. 6.) This right goes beyond Article 36 of the Vienna Convention by requiring that the Consulate be notified immediately and not wait for their national to request the notification as provided in the Vienna Convention. It is a highly significant right because as *Amicus* points out "prompt consular notification is the essential prerequisite for providing effective consular assistance" *(Amicus* Brief, pp. 8-11), and had the Consulate received the immediate notification required, they would have been there to counsel Sonny during the critical period when he was unlawfully badgered, manipulated and misled into making statements to Spidle. (*Amicus* Brief, pp. 19-23.)

Schultz and Spidle each emphasized to Sonny that his isolation would be at least 48 hours. Factually, the violations by Schultz and Spidle each contributed to the isolation that was part of the totality of circumstances which helped coerce Sonny's statements to Spidle and rendered them involuntary.

In its supplemental brief, respondent ignores the facts and inferences that make it clear that if either had informed Sonny of his right to consult the consulate or if either had let the Consulate know of Sonny's arrest, Sonny would have been far less vulnerable to the pressure placed on him by Schultz's badgering. Because the trial judge specifically stated that consular officials:

> would have ... gotten him counsel or helped ... and would have advised him not to do anything until counsel spoke with him first, just like you and I would have.

(IV RT 700: 19-22), the role that the treaty violations played seems clear: Schultz and Spidle were able to coerce Sonny into speaking without counsel by using his impending isolation from counsel for 48 hours as a weapon to force him into a misleading choice between "his only chance in life" – speaking to police without counsel present to get the charges reduced – or being tried for murder – "double homicides"; this gambit could only have worked if Sonny was also kept from consular officials, whom the trial judge found would have advised him to remain silent until he spoke to counsel. Moreover, as *Amicus* points out, the range of services that the Philippine Government supplies to its citizens who are subject to the death penalty would have given Sonny the additional resources he needed to resist the subtle compulsion employed by Schultz. (See Brief *Amicus Curiae*, pp. 17-19; see also *Id.* at 19-23 [legal relevance of depriving accused of access to consular assistance].)

C. The Trial Judge Ruled That Suppression Was Not An Independent Remedy For Treaty Violations, But Never Ruled On Their Effect On The Voluntariness of Sonny's Statements

Nonetheless, in its Answer to *Amicus*, respondent argues that "the trial judge found no link between the [treaty] violation and Enraca's" statements and that "the trial court's *finding* ... is amply supported by the record." (RAAB, p. 4). As made clear in Appellant's Reply Brief, the trial judge's statement was not a finding of fact, but a conclusion of law:

> You've equated it with *Miranda*, almost. In *Miranda,* it's a very specific area in criminal procedure about the statements. There's *linkage,* something flows from that directly, and I don't see there is any case authority or any logical proposition that a violation of the Vienna Convention means you can't introduce a statement.

(4 RT 899:19-26 [emphasis added].) (See ARB, p23; see generally ARB 22-24.) The trial judge made no finding of fact; he simply stated his understanding of the law – that there was no independent suppression remedy for a Vienna Convention violation. That understanding of the law was correct as far as it went, but what the trial judge did not understand is that "[a] defendant can raise an article 36 claim as part of a broader challenge to the voluntariness of his statement to the police." *(Sanchez-Llamas v. Oregon* (2006) 548 U.S. 331, 350.) Contrary to respondent's contention, the trial judge did not examine the impact of the admitted violations of the Vienna Convention and Bilateral Treaty on the Schultz-Spidle interrogation of Sonny; to the contrary, he refused to hear evidence from the consul on what would have happened had the consulate been informed of Sonny's arrest because he didn't "see that there is any case authority or any logical proposition that a violation of the Vienna Convention means you can't introduce a statement." (4 RT 899:21-26.) Thus, the trial judge erred in failing to consider the very question which was

before the trial court on the motion to suppress – what effect the treaty violations had on the voluntariness of Sonny's statements. That impact was substantial and nothing in the trial judge's erroneous rulings on the law can diminish that truth.

D. This Court Should Reject Respondent's Invitation To Ignore The Precise Claims Which The United States Supreme Court Directed Should Be Heard As Part Of A "Broader Challenge" to Voluntariness.

Respondent chooses to ignore that the record establishes that when Sonny was trembling on the brink, trying to decide, with his limited knowledge of the American criminal justice system, whether he should succumb to the compulsion, subtle and not so subtle, of Schultz and Spidle, that telling him that he could not see a lawyer for 48 hours and unlawfully denying him the information that he could see the Philippine Consulate was a substantial factor in his capitulation to the pressure. Moreover, respondent's argument that there is "no demonstrated connection between the [treaty] violation and Enraca's ... waiver of his rights" (RAAB, p.5), misconceives the burdens on a suppression motion. It is the State that "must demonstrate the voluntariness of a confession by a preponderance of the evidence." (*People v. Bradford* (1997) 14 Cal.4th 1005, 1033, citing *Colorado v. Connelly* (1986) 479 U.S. 157, 168.) As this brief, Appellant's Reply Brief, the Brief *Amicus* and Appellant's Opening Brief all demonstrate, the treaty violations played a substantial role in coercing Sonny. Respondent has not and cannot meet this burden because the simple truth is that Schultz crossed the bright line of *Edwards* with the effect of pressuring Sonny into talking before counsel was appointed, and the violation of the Vienna Convention and the Bilateral Treaty contributed to the pressure on Sonny (keeping him isolated from sound legal advice so that he would succumb to the false choice portrayed by Schultz).

Despite its necessary concession that *Sanchez-Llamas* requires consideration of treaty violations in deciding whether a statement was made voluntarily, respondent seems to argue in its Answer to *Amicus* Brief that *Sanchez-Llamas* is limited to cases in which there is an "uncomprehending detainee." (See RAAB, p.5 quoting concurrence of Justice Ginsburg, 548 U.S. at 361.) This Court should reject this thinly veiled attempt to circumvent the United States Supreme Court's direction that treaty violations may be "raised as part of a broader challenge to the voluntariness of his statement to the police." *(Sanchez-Llamas v. Oregon, supra*, 548 U.S. at 331.) As it was decided by the Supreme Court, *Sanchez-Llamas* did not involve the issue of voluntariness at all; it only involved the issue of whether a prophylactic suppression remedy should be implied from the Vienna Convention. (See 548 U.S. at 361, fn.1 (Justice Ginsburg, concurring).) The High Court declined to imply such a remedy because foreign nationals retained the full panoply of Fifth Amendment protections under *Miranda* <u>*and*</u> because any issue of treaty violations could be handled "as part of a broader challenge to the voluntariness." Respondent's argument limiting the "broader challenge" to detainees whose language difficulties made them totally "uncomprehending" would eliminate the very claims which the High Court intended to be heard. As Justice Ginsburg pointed out, "such a detainee would have little need to invoke the Vienna Convention, for *Miranda* warnings a defendant is unable to comprehend give the police no green light for interrogation." (548 U.S. at 361.) Rather, "the broader challenge" was clearly intended to include cases like this one where the detainee was not totally unable to understand the *Miranda* warnings, but where the interrogators used the foreign national's inexperience with the legal system, an inexperience which could have been remedied by consular officials, as a weapon in coercing him to talk without

counsel present. Moreover, respondent ignores the trial judge's finding the "clear violation" (IV RT 898:26) here included law enforcement's failure to "inform the person concerned without delay of his rights under this sub-paragraph." (Vienna Convention, Article 36(1)(b).) As appellant has maintained since his motion to suppress in the trial court, had he known of his right to confer with consular officials, (1) he "would have waited to speak with" his consular representatives before making any statements to the police and (2) he would have "followed the advice of my Philippine consulate had I been notified about my right to their access, and would have not listened to or more assuredly talked to" the police detectives. (5 CT 1258-1259.) Respondent's argument does not deal in any way with the impact of the failure to notify Sonny.

Finally, respondent seems to argue that this Court should not grant relief here where the facts warrant it because in *Sanchez-Llamas*, the "High Court observed that [i]n most circumstances there is likely to be little connection between an Article 36 violation and evidence or statements obtained by the police." (RAAB p. 3, quoting *Sanchez-Llamas* 548 US. at 349.) In making this argument, respondent takes language from *Sanchez-Llamas* out of the context of the issue before the Court there – whether to imply an independent suppression remedy for Vienna Convention violations alone – and attempts to apply it to the very remedy which the High Court not only did not limit, but explicitly endorsed – the motion to suppress based on lack of voluntariness. More importantly, this Court is not deciding here what happens "in most circumstances." Rather, it is deciding what the record in this case establishes. And here, the record establishes that Schutlz's violation of *Edwards* was exacerbated by his and Spidle's conceded treaty violations. Shultz sought to have Sonny give up the right to remain silent after Sonny invoked it and the treaty violations kept Sonny

from the very resources which would have given Sonny the support and understanding he needed to resist Schultz's pressure.

CONCLUSION

Appellant has demonstrated that the totality of the circumstances render his statements to Spidle involuntary. Schultz's efforts to get Sonny to talk after he invoked, the way that violation incorporated Schultz's past abusive questioning and emphasized the misleading and unsolicited legal advice Schultz gave Sonny that his "only chance in life" was to talk without counsel present, the psychological pressure placed on Sonny by Schultz's stern parental tone and the prospect of isolation from professional advocates for 48 hours, the failure of both Schultz and Spidle to inform Sonny of his right to consult the Philippine Consulate when he twice asked when he would get to see his lawyer, the way in which Spidle's "good cop" substance and demeanor dovetailed with Schultz's harsh interrogation tactics and false legal advice all contributed to coercing Sonny into talking without counsel present. These tactics were a successful "effort to wear the suspect down and persuade him to incriminate himself notwithstanding his earlier request for counsel's assistance." (*Oregon v. Bradshaw*, *supra*, 462 U.S. at 1044; *People v. Storm, supra,* 28 Cal.4th at 1024.)

On this record, it is clear that Sonny's statements were neither voluntary nor knowing. Certainly, respondent has failed to establish that the prosecution met its burden of demonstrating by a preponderance of the evidence that they were both.

Respectfully submitted,

April 26, 2010

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Paul J. Spiegelman
Attorney for Appellant SONNY ENRACA

CERTIFICATE PURSUANT TO CA. RULE OF COURT 8.630

I hereby certify that, according to my computer's word processing program, this brief, exclusive of tables, is 5,727 words above the 2,800-word limit specified in the California Rules of Court, Rule 8.520. An APPLICATION FOR LEAVE TO FILE APPELLANT'S SUPPLEMENTAL REPLY BRIEF IN EXCESS OF WORD COUNT LIMIT ESTABLISHED IN RULE 8.520 OF THE CALIFORNIA RULES OF COURT is being filed contemporaneously herewith.

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Paul J. Spiegelman
ATTORNEY FOR APPELLANT

DECLARATION OF SERVICE BY MAIL

Re: *People v. Enraca*, Supreme Court No. S 080947

I, Paul J. Spiegelman, declare that I am over 18 years of age and am not a party to this action. My business address is P.0. Box 22575, San Diego, CA 92192-2575. I served a copy of the attached:

APPELLANT'S SUPPLEMENTAL REPLY BRIEF

on each of the following by placing same in an envelope addressed respectively as follows:

SONNY ENRACA
P.O. Box P-48601
San Quentin, CA 94974

JERRY BROWN, Attorney General
William M. Wood, Deputy Attorney General
110 West A Street 92101
P.O. Box 85266
San Diego, CA 92186-5266

STEVEN PARNES, Staff Attorney
California Appellate Project
101 Second Street
San Francisco, CA 94105

Each said envelope was then, on April 26, 2010, sealed and deposited in the United States mail at San Diego, California, with postage fully prepaid.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at San Diego, California this 26th day of April, 2010.

PAUL J. SPIEGELMAN, DECLARANT