

Not Reported in Cal.Rptr.3d, 2009 WL 2463531 (Cal.App. 2 Dist.)

**Not Officially Published**

**(Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)**

[Briefs and Other Related Documents](#)

Only the Westlaw citation is currently available.

California Rules of Court, rule 8.1115, restricts citation of unpublished opinions in California courts.

Court of Appeal, Second District,  
Division 8.  
The PEOPLE, Plaintiff and Respondent,  
v.  
Gregory D. MINER, Defendant and Appellant.

No. B204677.  
(Los Angeles County Super. Ct. No. LA044952).  
Aug. 13, 2009.

APPEAL from a judgment of the Superior Court of Los Angeles County.

Barry Taylor, Judge. Affirmed in part; reversed in part; and remanded. [Matthew Alger](#), under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, [Pamela C. Hamanaka](#), Assistant Attorney General, Susan Sullivan Pithey, [Lawrence M. Daniels](#), and Catherine Okawa Kohm, Deputy Attorneys General, for Plaintiff and Respondent.

BENDIX, J. <sup>FN\*</sup>

<sup>FN\*</sup> Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to [article VI, section 6 of the California Constitution](#).

## INTRODUCTION

\*1 Appellant, Gregory D. Miner, was convicted of first degree murder with special circumstances, first degree residential robbery, and first degree burglary, and was sentenced to life in prison without the possibility of parole. He challenges his convictions, arguing that (1) his confession was coerced; (2) his expert witness on [Vicodin](#) addiction was erroneously excluded; and (3) the statute of limitations had run on the robbery and burglary charges, alleged in counts 3, 4, and 5. Miner challenges his sentence on one of the robbery counts (count 3) under [Cunningham](#),<sup>FN1</sup> as well as his sentence of life without parole, claiming that it is cruel and unusual under the California and federal Constitutions. We reject Miner's claims as to the murder convictions (counts 1 and 2), and affirm those convictions. Respondent agrees that we should remand the robbery and burglary counts (counts 3, 4, and 5) for a hearing on the statute of limitations, and we conditionally reverse the convictions on those counts for further proceedings.

<sup>FN1</sup>. See [Cunningham v. California \(2007\) 549 U.S. 270](#) ( *Cunningham* ).

## BACKGROUND

### 1. Procedural Background

Miner was charged by information, filed April 20, 2005, with having murdered and robbed Bertha Lasky and William Lasky, while committing a burglary in their home on February 4, 2001. Over defense counsel's objection, the trial court allowed the prosecution to play for the jury the recorded police interrogations of Miner, consisting of approximately six hours of audiotape and nearly two hours of videotape. Although Miner gave different versions of the events at first, he admitted that he had participated in the burglary of the Laskys' home during which the couple was murdered.

The jury convicted Miner of two counts of first degree murder (counts 1 and 2), found that each murder was a special circumstance within the meaning of [Penal Code section 190.2](#), subdivision (a)(3), and found true the allegations that the murders were also special circumstances within the meaning of [Penal Code section 190.2](#), subdivision (a)(17)(A).<sup>FN2</sup> The jury also found Miner guilty of two counts of first degree robbery (counts 3 and 4) and one count of first degree burglary (count 5). The jury found true the allegation that Miner had personally used a deadly weapon—a knife—in the commission of each offense.

[FN2. Penal Code section 190.2](#), subdivision (a)(3), provides that the conviction of more than one murder in the same proceeding is a special circumstance that increases the penalty to death or life in prison without the possibility of parole. [Penal Code section 190.2](#), subdivision (a)(17)(A), provides that murder during the commission of a robbery, or of a burglary of an inhabited dwelling, is also a special circumstance that increases the penalty to death or life in prison without the possibility of parole.

The trial court denied Miner's motion for new trial, and sentenced him to two consecutive terms of life in prison without the possibility of parole, plus one year for the use of a knife. As to one of the robbery counts, the court sentenced Miner to the high term of six years in prison, plus one year for the use of a knife, stayed pursuant to [Penal Code section 654](#).<sup>FN3</sup> As to each of the remaining counts, the court chose one-third the middle term and one-third the enhancement for the use of the knife—eight months, plus four months as to each offense—all stayed pursuant to [section 654](#). Miner filed a timely notice of appeal.

[FN3. Penal Code section 654](#), subdivision (a) reads, in relevant part: “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.”

## **2. The Police Interviews**

Miner was arrested August 22, 2001, and charged with a burglary unrelated to this case. Los Angeles Police Officer Christian Mayes testified that on that date, he brought Miner to the West Valley station, where he read him his *Miranda* rights, and interviewed him after he waived those rights.<sup>FN4</sup> Miner told Mayes that he worked with a group of people who burglarized homes, usually targeting elderly victims. He said that their names were “Blackie,” “Homie” or “Homey” and (in Spanish) “Negro.”

[FN4. See \*Miranda v. Arizona\* \(1966\) 384 U.S. 436 \( \*Miranda\* \).](#)

\*2 Miner was booked into jail, and the next day, he accompanied Officer Mayes and his partner, Officer Dunlop, to point out places where Miner believed burglaries had been committed. With Dunlop driving, Miner and the officers went to the western San Fernando Valley, where Miner pointed out approximately 19 homes as possible burglary locations. During the drive, when Miner observed a man standing in a driveway, he crouched down and attempted to hide, saying to the officers, “That's him,” and “Hurry up. I don't want him to see me.” Miner also said, “That's the guy I've been telling you about.”

After driving around for another hour or more, Officer Mayes decided to pass some houses on Pomelo Drive in the same area. As Mayes attempted to draw Miner's attention to them, Miner looked at a house on the opposite side of the street, began shaking and crying, and said, “Something really bad happened at that house.” While the officers stopped in front of the house in order to note the address, Miner was visibly distraught.

Back at the station, the officers placed Miner in an interview room, and called in Detectives Marcia and Lambkin from the robbery/homicide division. Detective Lambkin testified that Officer Mayes telephoned him that day, and told him he had in custody a person of interest in the murders of Mr. and Mrs. Lasky. Detective Lambkin had been investigating the murders since February 5, 2001, when firefighters found the

victims' bodies in their burned-out home. The couple had been stabbed to death, and their house set afire with gasoline.

The interview room was set up for surreptitious tape recording, and Miner was not told that the officers were recording the interview. Before Detective Lambkin arrived, Miner chatted with Officers Mayes and Dunlop, and expressed concern for his family. Dunlop told Miner that he could make no promises or tell him what would happen, but said that Miner would probably be arraigned the next day, and then his family could bail him out. When Miner said that his family probably would not bail him out, Dunlop went over with Miner where his son was residing while Miner was in custody (apparently with grandparents); Dunlop expressed his regret that Miner did not have his dog. The officers then questioned Miner regarding the 19 possible burglaries of houses he had pointed out to them earlier.

During the course of a discussion about what was stolen during the burglaries, Miner said in a calm voice, "So will I be in protective custody...." Officer Dunlop asked why Miner wanted protective custody and Miner confirmed Dunlop's suggestion that it was "because of things that we're going to talk about...." Dunlop explained in a matter of fact voice that "[w]e'll work that out, but depending on what you have to say, if that's necessary, absolutely. We won't leave you hanging.... [T]hat's probably possible, and again, our concern through all of this has been to do the right thing. For you to do the right thing, but in order-when we try to do the right thing for you, it all starts with you. [J] Remember I talked about this being a business deal? If you don't help yourself, [then] I'm not going to help you, because I can't." Miner indicated that it was hard for him to "talk about things like that."

\*3 When Detective Lambkin arrived shortly thereafter, Officer Mayes explained to Miner why Lambkin had been brought in, telling him that issues had come up that were not within the scope of the investigation into the burglaries they had been discussing. Mayes told Miner that, as he had said before, he could not make any promises about anything. Mayes also told him that Lambkin would reiterate that point to make it clear, and that he would read him his *Miranda* rights once again. Lambkin asked Miner several questions to determine whether he was comfortable, needed anything to drink, or had to use the restroom. Lambkin acknowledged, in an empathetic tone, that he knew that "this is a really tough spot for you," and that Miner "probably fe[lt] like [he had] the weight of the world on [him]," but that he wanted Miner to "relax" because Lambkin was not there "to judge [him]."

Detective Lambkin then read Miner his *Miranda* rights. Asked whether he understood those rights and wished to speak to him and the other officers about this investigation, Miner replied, "Most definitely, yes." Lambkin told Miner that any promises made to him that day were made only in relation to the simple burglaries he had discussed earlier with the officers. Lambkin said that those burglaries were a separate issue, and that the investigation had moved beyond them.

Detective Lambkin and the other officers then interviewed Miner for approximately six hours. Lambkin's and the other officers' tone of voice was generally calm and empathetic. They urged Miner to take his time whenever Miner started crying. In the beginning of Lambkin's questioning, after Miner described Blackie as a ringleader, and said that he was scared of him, Lambkin said that he was trying to make the situation as easy as possible, but that the police had already gathered evidence about a crime that Miner had not yet addressed. He also said that the best way for Miner to feel safe was to get Blackie off the streets.

Detective Lambkin told Miner that there was information Lambkin had that he was holding back from Miner for the purpose of determining whether he was credible, "to see if you're doing this because you truly want to do this, and because you need to cleanse your soul on this." Lambkin then gave Miner a break and tried to find a cigarette for Miner at Miner's request. In response to Miner's concerns about the safety of his family, Officer Mayes repeated that the only way "we can do anything as justice," was to put the "proper people" behind bars and that "we can do only what the law allows us to do." Mayes further acknowledged that "we all wish we could change history" and how unfortunate it was that Miner was "at this point." After initially expressing a desire to stop, Miner then said that "I want to make things right."

A short time after Detective Lambkin inquired about the house on Pomelo Drive, Miner began to cry. Throughout the interview, Miner was erratic emotionally-“very up and down”-and had periodic crying bouts. Later in the interview, Lambkin reiterated that no promises would be made.<sup>FN5</sup> When he believed that Miner was not telling him the complete truth or the truth at all, Lambkin calmly reminded Miner that lying would not help him. Lambkin also reiterated that although one could not change history, one could make things right.

[FN5.](#) Detective Lambkin's later advisement was made during a pause to change the recording machine's battery, and was not recorded.

\*4 When Miner again expressed concern for the safety of his son and fiancée, Detective Lambkin told Miner about his conversations with the children of the murder victims and how their lives were “hell” because they had no explanation as to what happened, and he said that it was time for Miner to “do what's right.” At the same time, Lambkin would inquire whether there was something he could do “to help [Miner] get through this.” Officer Mayes repeated what he had told Miner earlier, that is, that the way Miner would be protected was to put Blackie and anyone else behind the crime in jail. When Miner got emotional, Lambkin, Dunlop, and Mayes acknowledged that it was going to be difficult for Miner to recount the events and that Miner was trying to protect people; they encouraged Miner to relax and to take his time. Lambkin and Mayes also offered Miner breaks, water, and cigarettes when Miner was emotional or crying. Over approximately six hours, Miner gave the officers several different versions of the burglary of the Lasky home and the murders.<sup>FN6</sup>

[FN6.](#) For example, Miner at first claimed to have had four accomplices, Kevin, Blackie, Homie, and Negro. Another time, he claimed his accomplices were just Kevin, and Blackie. Later, Miner claimed that he was not there-that he just heard about the crime. Finally, he claimed to have committed the burglary with just Kevin and “Huero” or “Juaro,” and that Blackie, Negro, and Homie did not exist. Miner earlier claimed that Blackie had killed Mrs. Lasky, and later, that Kevin had killed her. Still later in the interview, it was Huero who killed her. At various times, Miner claimed that he killed Mr. Lasky, and at other times, he said that Negro, Homie, or Kevin killed Mr. Lasky. At one point during the interview, Miner also falsely claimed that the victims had been cut up, with body parts stuffed in a box, including the victims' heads.

Nearly two weeks after the audiotaped interview, Miner led the officers through a videotaped tour of the Laskys' fire-gutted house for nearly two hours, explaining the events, describing his and the movements of the other participants (i.e., Huero and Kevin) through the rooms of the house and the furniture that had been there at the time, and detailing the murders. Miner gave an emotional, but straightforward account that was consistent with his final version of the crimes given two weeks before.

Detective Lambkin's questioning during the videotaped tour was open-ended, allowing Miner to recount the events in his own words. Lambkin stated that he had not made any promises to Miner and Miner agreed. At the end of the interview, Lambkin gave Miner an opportunity to add or make any statement he would like and prefaced this open-ended remark with a reminder that the district attorney and the courts would be reviewing the tape. Lambkin was solicitous of Miner when Miner cried; he gave Miner space in terms of time and even physically to allow Miner to compose himself. He offered him cigarettes and water and took at least two breaks to allow Miner to rest. Lambkin acknowledged how difficult it was for Miner to remember the events leading up to the deaths of the victims. When Miner could not remember something, Lambkin reminded him that it was all right if he could not remember, and that Miner should not guess but just tell the truth. When the subject of prior burglaries with Kevin and Huero arose and Miner asked if he had to answer questions regarding any such prior incidents, Lambkin said that he did not and went on to another subject. Lambkin's demeanor throughout the tour was professional yet kind. The same was true for the demeanor of Detective Marcia, who asked a few questions toward the end of the interview.

## **DISCUSSION**

### ***1. Voluntariness of the Confession***

\*5 The admission of an involuntary confession is barred under the Fourteenth Amendment to the federal Constitution and under [article I, section 15, of the state Constitution](#). (*People v. Sanchez* (1969) 70 Cal.2d 562, 576 ( *Sanchez* ).) To be admissible, a confession must be shown to have been the product of a rational intellect and a free will, which the trial court determines from the totality of the circumstances surrounding the confession. (*Ibid.*)

Miner contends that the court should have granted his motion to suppress his statements to the police, made on the ground that the statements were involuntary-coerced by express and implied promises and threats.

“ ‘Once a suspect has been properly advised of his rights, he may be questioned freely so long as the questioner does not threaten harm or falsely promise benefits. Questioning may include exchanges of information, summaries of evidence, outlines of theories of events, confrontation with contradictory facts, even debate between police and suspect.... Yet in carrying out their interrogations the police must avoid threats of punishment for the suspect's failure to admit or confess particular facts and must avoid false promises of leniency as a reward for admission or confession.... [The police] are authorized to interview suspects who have been advised of their rights, but they must conduct the interview without the undue pressure that amounts to coercion and without the dishonesty and trickery that amounts to false promise.’ [Citation.]” (*People v. Holloway* (2004) 33 Cal.4th 96, 115 ( *Holloway* ).)

When reviewing the totality of the circumstances on appeal, we accept the trial court's resolution of disputed facts, if supported by substantial evidence, and we independently determine whether the confession was voluntary. (*People v. Massie* (1998) 19 Cal.4th 550, 576.) Here, the only evidence presented in support of his motion to suppress the statements consisted of the recordings, and there are no factual conflicts relating to Miner's statements to the police.

Miner has selected isolated remarks from the many hours of recorded statements, and he has provided his own interpretation of the remarks by the officers, without regard to the context of the entire interrogation. Our review of the tapes leads us to conclude that the totality of the circumstances demonstrates that the confession was voluntary. We discuss below the selected remarks, and endeavor to do so in the context in which they were made.

Included in Miner's selections are remarks made before Detective Lambkin arrived. Officer Dunlop said to Miner: “Remember I talked about this being a business deal? If you don't help yourself, [then] I'm not going to help you, because I can't.” In context, the remark clearly applied to an unrecorded prior conversation regarding the 19 burglaries about which the officers had been questioning Miner, before he became upset at the sight of the house where Mr. and Mrs. Lasky had been murdered. Any prior “business deal” or promises made to Miner no longer applied to the subject of the Lasky murders, as Officer Mayes made very clear just moments later: “As I said before, and as you agreed, that I couldn't make you any promises or anything at that point, okay, and [Detective Lambkin is] going to reiterate that so that we're clear, okay, and we'll go from there.” Miner replied, “Yeah.”

\*6 Miner also construes the following remarks by Officer Dunlop as implying a promise of benefit or leniency: “Whatever we provide with you, is based on what you provide with us too, remember when I told you that?” and, “You're only helping yourself, so if it takes more than necessary, or there's things that aren't quite the way they maybe should be, that you know that aren't quite, then you need to fix those, because that's the only way you're going to help yourself, and the only way we're going to be able to....”

While Miner reads an implied promise of leniency into Officer Dunlop's statements, our review of the recordings reveals that the benefit promised by the officers was an opportunity to do the right thing, not only for the victims, but also for Miner—to relieve his conscience. When Dunlop made the quoted statements, he also said, “You need to be straight; you know what I'm saying? [¶] I told you before, you're a smart guy, Greg, and this is a hard thing to do, but it's the right thing.” In addition to Dunlop's statement that “this is a hard thing to do, but it's the right thing,” the other officers frequently made the same point.

“[M]ere advice or exhortation by the police that it would be better for the accused to tell the truth when unaccompanied by either a threat or a promise does not render a subsequent confession involuntary. [Citations.] The distinction ... to be drawn ... ‘does not depend upon the bare language of inducement but rather upon the nature of the benefit to be derived by a defendant if he speaks the truth as represented by the police.’ [Citation.] Thus, ‘[w]hen the benefit pointed out by the police to a suspect is merely that which flows naturally from a truthful and honest course of conduct,’ the subsequent statement will not be considered involuntarily made. [Citation.]” (*People v. Jimenez*, (1978) 21 Cal.3d 595, 611-612, overruled on other grounds in *People v. Cahill* (1993) 5 Cal.4th 478, 510, fn. 17.) It is clear from the context of not only the challenged statements, but also, from the interviews as a whole, that the “help” promised by the officers to Miner was help to clear his conscience, which, without more, does not amount to coercion. (*People v. Andersen* (1980) 101 Cal.App.3d 563, 578 (*Andersen* ).)

Miner contends that the officers offered to provide protection for his family if he told the truth. A review of the entirety of the interviews shows that the officers made it clear that Miner could best provide for his family's protection by giving the officers the information necessary to arrest the person or persons who might harm Miner's family. Early in the interrogation, when Miner expressed concern for his safety and his family's safety, Detective Lambkin told him, “[T]he only way that we're going to be able to hopefully get you in a position to where you're safe, is ... to get him off the street and behind bars, okay? That's the bottom line.” Officer Mayes told him: “The only way that we can do anything as justice and what is right, is to make sure the proper people are put behind bars. [¶] ... [¶] ... From that point forward, we can do only what the law allows us to do.”

\*7 When Miner complained that the officers had not offered to protect his family, Officer Mayes replied, “How can I-I don't even know the story. I don't even know who to protect you from.” Officer Dunlop echoed Mayes, when he said: “I can't protect somebody from the phantom, Blackie.” Mayes made it clear that any offer of protection would consist only of arresting the accomplices. He said, “You give me the truth, and I'll-if you're lying, then I'm done, because I can't do any more for this investigation. I'm at that point. I can do nothing more for you in this investigation. I can't protect anybody, I can't go arrest people for you, I cannot, okay? So this is it. Tell me the truth, or I'm out.” Later, when Miner was still reluctant to name his accomplices, Detective Lambkin said, “The only way we can protect everybody is to get those guys, okay?”

A genuine promise of a benefit does not render a confession inadmissible when made by a person authorized to do what is promised. (*Andersen, supra*, 101 Cal.App.3d at p. 575.) The only arguable promise or benefit regarding protection was the promise to arrest the accomplices, a promise the officers had the authority to make. (See *Pen.Code. § 846*.) We conclude that the officers' remarks did not amount to coercion.

Miner also contends that Officer Mayes threatened harsh treatment by the detectives if Miner continued to lie. He quotes several of Mayes's statements, including, “I'm trying to be nice about this, but I guarantee you that the gentleman that was sitting right in this chair ten minutes ago, that's going to come back in here and not have this, this, this same perception that I'm having, okay, and this whole thing is going to take a really nasty turn for you” <sup>FN7</sup>; and, “It's time to help yourself, and what my partner's talking about, is these people milling around in this office and running through this trailer, at some point can say, you know what? That's enough, we gave him enough opportunities, like we came back in today into the jail and talked to you, okay, and at some point, they, just like he said, they're going to say, ‘You know what? That's enough’ and then our hands are tied. Two street cops were out there, busting ass, trying to do the right thing for you, because I think you're trying to do the right thing, but at some point, that ends. So we've got to do this, man. We've got to finish this, and I know you're trying to protect your family. I know you are.” In another example given by Miner, Mayes said, “Unless you want us out of here, and then tell me now, and I'll let them come in here and do this, okay, but I don't think they're going to do it with the same compassion, and I'm ... trying to be here with you, okay?” A few moments later, Mayes said, “We're going to have to go through it a third time now, because the story's not all right, okay? There, I don't want you to tell a story that hangs yourself with a bunch of lies, okay, because that's what's happening a little bit. Let's not, okay? No lies, right now, let's do it, okay?”

[FN7](#). Miner asked Officer Mayes what he meant by “nasty turn,” but Mayes did not say.

\*8 Again, we review the officer's statements as a whole and in context. ([Andersen, supra, 101 Cal.App.3d at p. 578](#).) Before Officer Mayes made the challenged remarks, and after Miner gave what Detective Lambkin considered a fanciful story about the delivery of body parts and a drug deal gone awry, Miner requested to speak to Mayes alone, without the detectives present. [FN8](#) After the detectives complied with the request and left the room, Mayes warned Miner not to make up stories, to go straight through the true events one time only. When Miner said that he was never going to see his family again, Officer Dunlop urged him to tell the truth, but made no promises: “I don't know what to tell you, other than do the right thing, you see what I'm saying, and you are.” When Miner digressed again, Mayes reminded him that he had asked the detectives to leave the room. When Miner again picked up the story that Lambkin had called “bizarre,” Mayes warned him that if he did not provide a full, truthful version of the events, the detectives would take over the interview once again. Mayes then uttered the challenged remarks quoted at length in the previous paragraph.

[FN8](#). Miner seemed to feel more comfortable with Mayes. During a break early in the interview, an unidentified woman entered the interview room and chatted with Miner. Miner told her that Mayes and Dunlop were “great guys.” Later, when Lambkin took back the interview from Mayes, he said to Miner, “I thought you had a rapport with these guys. I took it you didn't want me in here, that's why I left.”

It is apparent from his sometimes raised voice that Officer Mayes was frustrated with Miner's obvious evasions, and it is unlikely that Miner construed his remarks about Detective Lambkin's returning as anything but venting that frustration. Lambkin's calm, low-key style had already amply demonstrated that Miner had no reason to believe that turning the questioning back over to the detectives would result in harsh treatment. That same low-key style characterized Lambkin's discussions with Miner when Lambkin returned to the interview room.

Instead, Officer Mayes's comments can be fairly interpreted to evidence an effort to have Miner identify with him as a fellow “T-shirt” man, that is, to give the impression that Miner could open up to him because Mayes understood Miner, in contrast to “suits” like Detective Lambkin. Mayes's reference to a “nasty turn” could reasonably be construed as regarding the long intervals of choking up and sobbing that Miner had experienced due to the potential of having to relive, once again, his role in the violent events that were the subject of the interview. That term could not have been reasonably understood to refer to harsh interrogation techniques, because there were none. Finally, the record provides no reason to believe that Mayes was suggesting that Miner faced a hanging execution, by telling him not “to tell a story that hangs [him] with a bunch of lies,” rather than admonishing Miner not to trip himself up in his lies.

Even where isolated sentences and phrases can be viewed as implied threats, a confession will not be invalidated where the interview, taken as a whole, has been conducted lawfully. ([Andersen, supra, 101 Cal.App.3d at p. 581](#).) Here, other than the few, specially selected, short remarks lasting a few minutes in a six hour recording, the interviews consisted of the courteous, calm, and nonthreatening questioning by police interrogators whose words, tone, and pace indicated no coercion. We conclude that in the context of the totality of the circumstances, Officer Mayes's remarks were not coercive.

\*9 Miner has also selected a few of Detective Lambkin's remarks that he construes as promises of leniency in the prosecution against him, in exchange for his confession. Lambkin told Miner that the officers could say to the district attorney, “Hey, here's a guy who understood the mistake he made, and he came forward and wanted to tell us what really happened and clear his conscience, and make things as best as they could be for the victim's families, Okay? [¶] Or, here's a guy who sat and lied to us for six hours....” A few minutes later, Lambkin said to Miner, “I would like to give you the opportunity just to explain to me what happened to you that you ended up involved in this thing, that's it. Otherwise, I'm packing my books, and I'm booking you for Murder right now, instead of Burglary, and I'm going to tell the DA that I think you premeditated this whole thing....”

Although one who is knowledgeable about punishment for murder might infer from the word, “premeditated,” a threat to recommend the death penalty, we agree with respondent that the quoted statements are similar to those that did not render a confession involuntary in [Holloway, supra, 33 Cal.4th at pages 113-115](#). There, one of the interrogating detectives said to the defendant, “We’re talking about a death penalty case here,” and suggested that he would benefit from giving a truthful, mitigating version of the crimes. ([Id. at p. 113](#), italics omitted.) The California Supreme Court held that isolated remarks about punishment do not invalidate a confession, unless the confession resulted directly from a threat, coupled with a promise of leniency. ([Id. at p. 116.](#))

Neither before nor after the challenged remarks, did Detective Lambkin promise not to charge Miner with murder or to charge him with a lesser degree of murder in exchange for his confession. On the contrary, early in the audiotaped interview, Lambkin explained to Miner that they had “moved beyond a simple burglary investigation,” and he could make no promises. Indeed, throughout the interview, Lambkin and the other officers urged Miner to tell the truth simply because it was the right thing to do. No false promises were made, and any promise made was not for leniency, but to help unburden Miner’s conscience. Following the above-quoted remarks, Lambkin calmly explained to Miner how Lambkin knew that Miner had lied, and then followed up on Miner’s expressed desire to help the victim’s family “find closure,” specifically referencing Miner’s earlier request for a pad of paper to write the family an apology. <sup>FN9</sup>

[FN9](#). Detective Lambkin did indicate that telling lies would not make him sympathetic to a jury or a sentencing judge. That is not a promise of leniency, but instead, an accurate statement. There was nothing coercive about that verity.

It is clear that in light of Detective Lambkin’s demeanor throughout the interviews, and considered in context, Lambkin’s remark-“I’m booking you for Murder right now, instead of Burglary”-was about timing, not about a threat to charge the greater offense instead of the lesser one. Miner had already been charged with burglary, and no promise was ever made to charge him with burglary instead of murder. Lambkin testified that because Miner would be in custody on the burglary charge, he intended to take (and did take) some time in investigating the murders before filing the murder charge. We construe the remark as no more than a threat to cut the interview short and charge the murder earlier, rather than later, giving Miner no time to clear his conscience.

\*10 It is not unusual for a remorseful defendant to want the police to find out his wrongdoing, while, at the same time, wanting them to coax out a confession. ([Andersen, supra, 101 Cal.App.3d at pp. 583-584.](#)) “The compulsion to confess wrong has deep psychological roots, and while confession may bring legal disabilities it also brings great psychological relief.” (*Ibid.*) Miner expressed a great deal of remorse throughout both interviews, and often spent several minutes unable to speak because he was crying. In the audiotaped interview, Miner told the officers that he had been noticeably disturbed after the murders, and that he suffered nightmares that woke him up in the middle of the night.

Toward the end of the interview, Miner shook Detective Lambkin’s hand, and apologized for his earlier false statement. When left alone for a few minutes, he cried and said, “I’m sorry God, I’m so sorry. I’m sorry.” When Officer Mayes entered the room, Miner shook his hand, thanked him, and said, “You helped me so much, ... and I’m sorry for keeping you from your family.” Miner requested paper and a pen in order to write a letter to the family of the murdered couple. He wrote that he had tried to do the right thing, and would continue to try to bring the others to justice. He asked for their forgiveness.

When, as here, a remorseful defendant has been given *Miranda* warnings and has expressed a desire to confess, and the totality of the facts gives rise to a strong inference that the confession was the result of that remorse and desire, a few isolated police remarks that could be construed as threatening will not invalidate the confession. (See [Andersen, supra, 101 Cal.App.3d at pp. 583-584](#) .) We conclude that Miner’s confession was not coerced, but was the voluntary product of “a rational intellect and a free will.” ([Sanchez, supra, 70 Cal.2d at p. 572.](#))

## **2. Exclusion of Expert Testimony**

Miner contends that the trial court erred in ordering him to submit to a mental examination by a prosecution expert as a prerequisite to presenting the testimony of his expert witness, Dr. Plotkin, a psychiatrist.<sup>FN10</sup> Miner has mischaracterized the proceedings.<sup>FN11</sup> The court had no occasion to order him-or refrain from ordering him-to submit to an examination, because defense counsel, Mr. Sakata, made it clear that, although he intended to present testimony regarding the effect of [Vicodin](#), he did not intend to present testimony regarding the effect of the drug specifically on Miner.<sup>FN12</sup> Thus, the defense was not presented with a “Hobson's choice,” as Miner contends, between submitting to a mental examination and not presenting Dr. Plotkin's testimony, because no such order was made.

[FN10](#). Since the passage of Proposition 115 in 1990, trial courts are no longer authorized to order a criminal defendant to submit to a mental examination by a prosecution expert even if defendant puts his or her mental state at issue. ([Verdin v. Superior Court \(2008\) 43 Cal.4th 1096, 1102, 1109.](#))

[FN11](#). Indeed, not only does Miner fail to cite to the transcript of the pretrial conference, but also, he disregards the hearing altogether until his reply brief.

[FN12](#). The Physician's Desk Reference lists Vicodin as an opioid analgesic that contains hydrocodone.

Our review of the pretrial conference in which Dr. Plotkin's testimony was discussed shows that the prosecuting attorney, Ms. Samuels, told the court that the defense intended to call a psychiatrist who had interviewed Miner. She then demanded that the court order the defense to turn over the psychiatrist's report and require Miner to submit to an interview with a prosecution expert. Sakata indicated that there was no such report and that his expert could not be compelled to write one. When the court asked Sakata whether his expert was going to testify on what effect [Vicodin](#) addiction could have had on Miner during his police interviews, defense counsel initially told the court that he had not yet decided whether Dr. Plotkin would testify on that subject. When Samuels protested that she would need advance notice of the scope of Dr. Plotkin's testimony so that her own psychiatrist could examine appellant if there was not going to be a report from Dr. Plotkin, defense counsel requested a section 402 examination of Dr. Plotkin prior to any order regarding a mental examination.<sup>FN13</sup> The court offered to set another pretrial conference and to hear the proposed testimony at that time. Samuels offered to stipulate that Miner was addicted to [Vicodin](#).

[FN13](#). [Evidence Code section 402](#) provides for a hearing to determine the question of the admissibility of evidence outside the jury's presence.

\*11 Ultimately, Sakata represented that Dr. Plotkin would not testify about his psychiatric evaluation of Miner, or how [Vicodin](#) affected Miner, but would testify merely regarding the effect of [Vicodin](#) on people in general. Sakata provided no offer of proof at the hearing as to the relevance of [Vicodin](#) addiction's effect on people in general and expressly disclaimed any intent to proffer Plotkin on how [Vicodin](#) “affected [Miner] when he was talking to the police officers.”

The court agreed with the prosecution that because drug addiction may affect each individual differently, the proposed testimony would be irrelevant, unless the witness also testified regarding the particular likely effect on Miner. The court, however, initially refused to rule on the issue. The court then set a [section 402](#) hearing if defense counsel wanted to have Dr. Plotkin testify about the specific effect of [Vicodin](#) on Miner. The court expressly recognized its lack of power to order defense counsel to produce a report. When Sakata indicated that he would not use Dr. Plotkin to testify about the effect of [Vicodin](#) on Miner, but instead, only “how [Vicodin](#) affects people,” the court ruled that testimony as to how [Vicodin](#) affects people in general was irrelevant.

Miner also contends that the court erred in finding the proposed testimony irrelevant. He argues on appeal that Dr. Plotkin's testimony would have a tendency to prove that Miner may have lied during the

interrogation, because [Vicodin](#) addiction may affect a suspect's perception, or because an addict might think that lies would end the interrogation quickly, and thereby give him sooner access to more [Vicodin](#). Miner, however, never made that proffer of proof to the trial court. Nor was there any proffer of proof that Miner had taken [Vicodin](#) close to, or at the time of his interview. In his reply brief on appeal, citing to defense counsel's argument at the pretrial conference, Miner contends that the expert would have testified as to the effect of [Vicodin](#) on someone who had "consumed the narcotic in the quantities and duration described by appellant when he was interrogated by the police." To the extent that Miner intimates that there is anything in the defense counsel's pretrial argument regarding [Vicodin](#) that Miner consumed at or close to the time of his interview, Miner has misread the record. Defense counsel made no representation as to any [Vicodin](#) use by Miner at or close to the time of his police interview, but only referred to Miner's "history of drug use in the tapes."

Given the absence of any proffer of proof linking Dr. Plotkin's proposed testimony about the effect of [Vicodin](#) on people in general to Miner's police interview, the trial court was well within its discretion to exclude that testimony. "Speculative inferences are, of course, irrelevant." ([People v. Stitely \(2005\) 35 Cal.4th 514, 549-550](#) [affirming exclusion as speculative of expert testimony as to the effect of a blood alcohol level sufficient for a DUI prosecution on sexual inabilities in general, proffered to show that the murder victim's sex with defendant was consensual]; [3 Witkin, Cal. Evidence \(4th ed. 2000\) Presentation at Trial, § 282, pp. 353-354](#) [referencing California rule excluding "as collateral matter" drug addiction testimony used to impeach veracity "unless it is followed by testimony tending to show that the witness was under the influence while testifying or when the events occurred, or that his or her mental faculties were actually impaired by the addiction"].) We conclude that the trial court did not abuse its discretion in excluding Dr. Plotkin's testimony.

\*12 We also reject Miner's contention that the proceedings implicated his constitutional right to present evidence or to compel the attendance of witnesses in his defense. The United States Supreme Court has made it clear that the admission of repetitive, irrelevant, or marginally relevant evidence is not mandated by the Constitution. ([Crane v. Kentucky \(1986\) 476 U.S. 683, 689-690](#); see also [People v. Lucas \(1995\) 12 Cal.4th 415, 457](#).) "[T]he Constitution leaves to the judges who must make these decisions 'wide latitude' to exclude [such] evidence...." ([Crane v. Kentucky](#), at pp. 689-690, quoting [Delaware v. Van Arsdall \(1986\) 475 U.S. 673, 679](#).)

In any event, had the court erred, we would find the error harmless even under the test applicable to constitutional error, as set forth in [Chapman v. California \(1967\) 386 U.S. 18](#). Miner's prevarications were obvious to anyone listening to the tapes. As recited above, he told multiple versions of the events leading up to the victims' demise. Testimony to the effect that [Vicodin](#) can make persons lie in an interrogation would not have been probative as to which of the many versions Miner gave during his police interviews was purportedly affected by his [Vicodin](#) addiction. Nor was Dr. Plotkin's testimony needed to demonstrate that Miner sometimes lied to the officers in his interviews. That too was obvious from any review of the tapes themselves.

### ***3. The Statute of Limitations***

For the first time on appeal, Miner contends that the three-year statute of limitations ran prior to trial on counts 3 and 4-the robbery charges-and count 5-the burglary charge. The time for commencing prosecution of burglary and robbery charges runs three years from the commission of the offenses. ([Pen.Code, § 801](#); see also [People v. Turner \(2005\) 134 Cal.App.4th 1591, 1595](#).) A prosecution for a felony offense is commenced when "any of the following occurs": The indictment or information is filed; the defendant is arraigned on a complaint charging him with the felony; or an arrest warrant or bench warrant is issued that describes the defendant with the same degree of particularity required for an indictment, information, or complaint. ([Pen.Code, § 804](#), subs.(a), (c) & (d).)

In a criminal case, when the statute of limitations is raised for the first time on appeal, and the information shows that the action may be time-barred, the appellate court must remand for a hearing on the statute, unless the court can determine from the available record whether the defendant was arraigned on a complaint charging him with the felony offense, or whether a warrant was issued describing him with the

requisite degree of particularity. ([Pen.Code, § 804](#), subds.(a), (c) & (d); [People v. Williams \(1999\) 21 Cal.4th 335, 338-341.](#))

Here, the information was filed on April 20, 2005, alleging offenses committed on February 4, 2001. The preliminary hearing began on March 15, 2005. Miner was arraigned on the information on June 3, 2005. The record does not indicate whether Miner was arrested on a warrant. Although Detective Lambkin testified that he filed a complaint in this case on January 20, 2004, that complaint is not in the record. Contrary to Miner's argument that the information demonstrates conclusively that the three-year statute has run as to counts 3, 4, and 5, the foregoing gaps in the record require remand. For example, if an arrest warrant with the required particularity had been issued prior to February 4, 2004, or Miner was arraigned prior to February 4, 2004, on a complaint that included the felony charges at issue here, the prosecution would have been timely commenced. ([Pen.Code, § 804](#), subds.(c) & (d).) Respondent concedes, and we agree that we must therefore remand for a hearing on the statute of limitations as to counts 3, 4, and 5. (See [People v. Williams, supra, 21 Cal.4th at p. 341.](#))

#### **4. Ex Post Facto and Cunningham**

\*13 Miner contends that sentencing him to the upper term as to his count 3 for first degree robbery was error under [Cunningham, supra, 549 U.S. 270](#), which was decided on January 22, 2007, and violated the ex post facto clauses of the California and federal Constitutions. Miner's claims are precluded under [People v. Sandoval \(2007\) 41 Cal.4th 825](#) (*Sandoval*).

In [Apprendi v. New Jersey \(2000\) 530 U.S. 466, 490](#), the United States Supreme Court held that “[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.” The “statutory maximum” means “the maximum sentence a judge may impose *solely on the basis of the facts reflected in the jury verdict or admitted by the defendant.*” ([Blakely v. Washington \(2004\) 542 U.S. 296, 303.](#)) In *Cunningham*, the high court applied these rules to California's determinate sentencing law (DSL), under which a trial judge was required to impose the middle term unless it found circumstances in aggravation or mitigation of the crime. *Cunningham* concluded that the DSL violated a defendant's right to trial by jury, because it authorized the judge, not the jury, to find the facts that render a defendant eligible for an upper term sentence. ([Cunningham, supra, 549 U.S. at p. 293.](#))

In response to the *Cunningham* decision, the Legislature amended the DSL, effective March 30, 2007, to eliminate the offending provisions. The amended statute allows a sentencing court to exercise its discretion to select among the lower, middle, and upper terms. ([Pen.Code, § 1170](#), subd. (b) [“When a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the choice of the appropriate term shall rest within the sound discretion of the court”].)

Miner was sentenced on December 18, 2007. He contends that, because the crime was committed prior to March 30, 2007, he should have been sentenced under the former [Penal Code section 1170](#), which required the court to justify the upper term, and that his sentencing under the amended statute was an unconstitutional ex post facto application. He further contends that because the court failed to articulate any reason for imposing the upper term, and because there is no circumstance in aggravation noted in the court's minute order or in the probation report, one cannot determine “whether the jury would have rendered a verdict that would have authorized the upper term sentence.” Thus, under *Cunningham* and the former [section 1170](#), the upper term was unauthorized.

We digress to note that Miner does not challenge the trial court's failure to articulate any reasons for imposing the upper term, which was required by [Penal Code section 1170](#), subdivision (c), both before and after the 2007 amendment. We thus do not address that issue. (See [People v. Stanley \(1995\) 10 Cal.4th 764, 793.](#))

\*14 On July 19, 2007, the California Supreme Court decided [Sandoval, supra, 41 Cal.4th 825](#). In *Sandoval*, the trial court had imposed the upper term in violation of the defendant's Sixth Amendment rights as established in *Cunningham*; the Supreme Court concluded the error was not harmless, and it was necessary to remand the case for resentencing. *Sandoval* expressly directed that “sentencing proceedings to

be held in cases that are remanded because the sentence imposed was determined to be erroneous under *Cunningham* ... are to be conducted in a manner consistent with the amendments to the DSL adopted by the Legislature.” <sup>FN14</sup> (*Sandoval*, at pp. 846-847[“[t]he trial court will be required to specify reasons for its sentencing decision, but will not be required to cite ‘facts’ that support its decision or to weigh aggravating and mitigating circumstances”].)

<sup>FN14</sup>. The court observed that it was “arguable” that the amendments to the DSL should be viewed as a change in procedural law, and therefore applicable to any sentencing proceedings conducted after the effective date of the amendments. However, the court did not decide that issue, “because even if we assume that the recently enacted legislation does not, by its own terms, apply to cases that are remanded for resentencing, this court would have the responsibility and authority to fashion a constitutional procedure for resentencing in cases in which *Cunningham* requires a reversal of an upper term sentence.” (*Sandoval*, [supra](#), [41 Cal.4th at pp. 845-846](#).)

*Sandoval* further observed that the Legislature's action in amending the DSL made it unnecessary for the court to decide whether judicially to reform the statute “with regard to its application for all future cases.” (*Sandoval*, [supra](#), [41 Cal.4th at p. 849](#).) But, said the court, “[t]o the extent ... that our holding might be characterized as a limited reformation of the statute with regard to its application in resentencing proceedings, such a reformation is appropriate.” (*Ibid.*)

The *Sandoval* court also rejected the defendant's claim that resentencing her under a scheme in which the trial court has discretion to impose any of the three terms would deny her due process of law and violate the prohibition against ex post facto laws (*Sandoval*, [supra](#), [41 Cal.4th at pp. 853-857](#)), and concluded that “the federal Constitution does not prohibit the application of the revised sentencing process ... to defendants whose crimes were committed prior to the date of our decision in the present case.” (*Id.* at p. 857.) For the reasons noted above and consistent with *Sandoval*, Miner's ex post facto and Sixth Amendment claims are not well-founded.

##### **5. Constitutionality of Life Without Parole**

Suggesting that the jury did not find that he actually killed the Laskys, Miner contends that life without the possibility of parole is a grossly disproportionate punishment for one who was not the actual killer, and thus prohibited under the United States and California Constitutions.<sup>FN15</sup> We turn first to Miner's argument under the Eighth Amendment to the United States Constitution.<sup>FN16</sup>

<sup>FN15</sup>. Unlike the United States Constitution Eighth Amendment's prohibition against “cruel and unusual punishment,” the California Constitution prohibits “cruel *or* unusual punishment.” ([Cal. Const., art. I, § 17](#), italics added.)

<sup>FN16</sup>. Although Miner contends that his sentence is disproportionate, he does not undertake the usual Eighth Amendment proportionality analysis, “guided by objective criteria, including (i) the gravity of the offense and the harshness of the penalty; (ii) the sentences imposed on other criminals in the same jurisdiction; and (iii) the sentences imposed for commission of the same crime in other jurisdictions.” ([Solem v. Helm](#) (1983) 463 U.S. 277, 292.) Miner addresses only the first factor.

We do not agree that the prosecution's sole theory was that Miner did not personally kill. The trial court gave the jury the definitions of both murder and felony murder, as well as aiding and abetting, and instructed that the robbery/burglary special circumstances did not require a finding of intent to kill if the jury found that the defendant actually killed a human being; if not, the jury was required to find that the defendant acted with reckless indifference to human life.<sup>FN17</sup> The prosecuting attorney, Ms. Samuels, explained: “[I]f you are satisfied beyond a reasonable doubt that the defendant actually killed a human being, you need not find that the defendant intended to kill in order to find the special circumstance to be true. [¶] Now we do have some evidence in some of the defendant's earlier statements that he is the one that

actually killed William Lasky. [¶] You may or may not believe that.” Samuels went on to discuss the law to apply if the jury did not find that Miner killed Mr. Lasky. She did not suggest that he did not do so, but merely discussed both alternatives.

[FN17](#). As special circumstances, the information alleged, and the jury found that appellant was guilty in the same case of two murders, and that the murders were committed in the course of a robbery and a burglary of an inhabited dwelling.

\*15 Further, we do not agree with Miner's argument that the jury necessarily found that Miner did not personally kill. The jury expressly found that Miner personally used a knife in the commission of both murders, suggesting that the jurors believed that Miner killed one or both victims, or used the knife to subdue one or both victims, enabling an accomplice to do so.

In any event, the federal Constitution does not prohibit even the death penalty for a defendant who was not the actual killer and did not intend to kill, so long as he was a major participant in the underlying felony, and acted with reckless indifference to human life. ([Tison v. Arizona \(1987\) 481 U.S. 137, 138, 158.](#)) Miner does not contend that there was no substantial evidence to establish that the deaths occurred while he was a major participant in the underlying felony, and acting with reckless indifference to human life-circumstances permitting the death penalty ([id. at p. 158.](#)) and thus sufficient to justify the lesser penalty of life imprisonment without parole.

The evidence was sufficient to support either a finding that Miner actually killed, or that he was major participant in the underlying felony, acting with reckless indifference to human life.<sup>FN18</sup> Mr. Lasky was stabbed four times in the chest and three times in the neck. Mrs. Lasky's throat was cut. Although Miner gave contradictory accounts, accusing various accomplices, who may or may not have existed, he admitted killing Mr. Lasky. Early in his police interview, Miner claimed that he held Mr. Lasky while Homie killed him. Then, Miner claimed that he killed Mr. Lasky while Kevin held him. Miner initially said he stabbed him with a knife that Blackie had given him. Later, Miner claimed that he watched Blackie slit the man's throat while a previously unmentioned accomplice named Wayne held his legs. Miner then claimed to have slit Mr. Lasky's throat while Blackie held his legs. Finally, Miner claimed that Kevin killed Mr. Lasky. Miner never admitted killing Mrs. Lasky, but admitted hitting her, and said that he held her while others stripped, raped, and cut her.<sup>FN19</sup> At various times, he accused Kevin, Huero, and Blackie of having cut her throat. Miner's credibility and the inconsistencies in the evidence, including internal conflicts in Miner's statements, were questions for the jury to resolve (see [People v. Young \(2005\) 34 Cal.4th 1149, 1181.](#)) and the jury resolved those issues against Miner.

[FN18](#). Appellant merely recites portions of his statements that would support his argument. “On appeal that portion which supports the judgment must be accepted, not that portion which would defeat, or tend to defeat, the judgment. [Citations.]” ([People v. Thomas \(1951\) 103 Cal.App.2d 669, 672.](#))

[FN19](#). No physical evidence of rape was discovered.

We conclude that under the circumstances of this case, whether or not the jury found Miner to have been the actual killer, life without the possibility of parole does not offend the Eighth Amendment to the United States Constitution. We turn to Miner's contention that the sentence offends the California Constitution.<sup>FN20</sup>

[FN20](#). Citing [People v. Kelley \(1997\) 52 Cal.App.4th 568, 583.](#) and [People v. DeJesus \(1995\) 38 Cal.App.4th 1, 27.](#) respondent points out that defendant forfeited his claim by failing to assert it in the trial court. We will nevertheless “reach the merits under the relevant constitutional standards, in the interest of judicial economy to prevent the inevitable ineffectiveness-of-counsel claim.” ([People v. Norman \(2003\)](#)

[109 Cal.App.4th 221, 230.](#))

In [People v. Dillon \(1983\) 34 Cal.3d 441](#) (*Dillon*) and [In re Lynch \(1972\) 8 Cal.3d 410](#) (*Lynch*), the California Supreme Court developed a proportionality test to determine whether a punishment is permitted under the state Constitution. Under that test, we consider the nature of the offense and of the offender, in order to determine whether the sentence “so disproportionate to the crime for which it is inflicted that it shocks the conscience and offends fundamental notions of human dignity.” (*Lynch*, at p. 424, fn. omitted; see also *Dillon*, at pp. 478-479.)

\*16 A review of the nature of the offense involves “such factors as its motive, the way it was committed, the extent of the defendant's involvement, and the consequences of his acts.” ([Dillon, supra, 34 Cal.3d at p. 479.](#)) If an examination of the facts of the offense may reveal that it was trivial, nonviolent, or victimless, life in prison is more likely to be found to be disproportionate. (See [Lynch, supra, 8 Cal.3d at pp. 425-426.](#)) To consider the nature of the offender, we inquire “whether the punishment is grossly disproportionate to the defendant's individual culpability as shown by such factors as his age, prior criminality, personal characteristics, and state of mind.” (*Dillon*, at p. 479.)

Miner “must overcome a ‘considerable burden’ in convincing us his sentence was disproportionate to his level of culpability. [Citation.]” ([People v. Weddle \(1991\) 1 Cal.App.4th 1190, 1197](#).) Miner fails to meet that burden. Other than repeating his own belief that the jury did not find him to be an actual killer, Miner suggests that the sole fact supporting a finding of a high level of involvement and culpability was his awareness that he was committing a burglary with potentially dangerous people, which he claims was outweighed by his “apparent[ ]” attempt to dissuade his confederates not to kill the victims. Miner's only arguments regarding the nature of the offender are that he did not have a prior criminal history, he was intimidated by the ring leader, and was horrified by the murders.

Miner, at age 36, was not a youthful offender. He knew even before he entered the Lasky home that his accomplices were violent. Not only did Miner know that his accomplices were bad people, but also, he had been told that if a victim were to surprise them during a burglary, “just hit them, tie them up, do anything you can....” He then willingly entered the victims' homes knowing that if they were present, they would be harmed. His claim of intimidation thus sounds hollow. His lack of criminal convictions was fortuitous. By his own admission, he was a prolific burglar, who confessed to having broken into many homes, sometimes three or four per day.

In his interviews, Miner claimed that he tried to talk the others out of killing the couple. Inferences can also be drawn from the same interviews that Miner was not a reluctant participant, as he had more than one opportunity to escape the robbery scene and get help before Mr. and Mrs. Lasky were killed. Miner admitted that he held Mr. Lasky at knifepoint while the others were out of the room with Mrs. Lasky for 15 or 20 minutes. Miner said that he cleaned the house alone for 30 or 35 minutes, while the others were in the back rooms with the Laskys. At another time, Miner told the officers that he was alone in the living room while Mrs. Lasky was being killed, and that he contemplated calling 911.

Miner's scant analysis of the facts grossly understates his culpability and the horrific nature of the offense, which was committed for monetary gain, and was neither trivial, nonviolent, nor victimless. (See [Dillon, supra, 34 Cal.3d at pp. 478-479](#); [Lynch, supra, 8 Cal.3d at pp. 425-426.](#)) In Miner's own words to the police, “They were slaughtered”; and, “It was horrible.” Miner admitted killing one of the victims, and his statements established that he played a major part in the underlying robbery and burglary for six or more hours, during which the couple was brutalized with his assistance before they were finally killed.

\*17 We conclude that there is no basis in this record to find that life without parole is so disproportionate to Miner's crimes that it shocks the conscience or offends fundamental notions of human dignity. ([Dillon, supra, 34 Cal.3d at pp. 478-479](#); [Lynch, supra, 8 Cal.3d at p. 424.](#))

## DISPOSITION

The judgment is affirmed as to counts 1 and 2. As to counts 3, 4, and 5, the matter is conditionally reversed and remanded for a hearing to determine whether the prosecution was timely commenced. If the trial court finds that the statute of limitations had run as to any of these counts, the court is instructed to vacate the judgment as to the barred counts, and to dismiss those counts. If the trial court finds the statute of limitations had not yet run, the judgment of conviction shall be reinstated.

We concur: [RUBIN](#), Acting P.J., and BIGELOW, J.

Cal.App. 2 Dist., 2009.

People v. Miner

Not Reported in Cal.Rptr.3d, 2009 WL 2463531 (Cal.App. 2 Dist.)

Not Officially Published

(Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)

Briefs and Other Related Documents ([Back to top](#))

- [B204677](#) (Docket) (Dec. 18, 2007)

END OF DOCUMENT