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ADVANCE SHEET HEADNOTE  
June 24, 2024

2024 CO 49

**No. 24SA23, *People v. Cerda*—*Miranda* Protections—Coercion—Involuntary Statements—Suppression—Fifth Amendment—Right to Remain Silent.**

The defendant in this interlocutory appeal was subjected to custodial interrogation, triggering the protections of *Miranda v. Arizona*, 384 U.S. 436 (1966). The detectives advised the defendant of his *Miranda* rights, but they violated those rights when they continued interrogating the defendant after he clearly and unambiguously invoked his right to remain silent. Accordingly, the supreme court affirms the portion of the district court's order suppressing the defendant's post-invocation statements from the prosecution's case-in-chief.

The supreme court further holds, however, that the detectives' failure to scrupulously honor the defendant's invocation of his right to remain silent did not overbear the defendant's will. Therefore, the defendant's statements were voluntary. The supreme court reverses the portion of the district court's order to the contrary and remands the case for further proceedings consistent with this opinion.

**The Supreme Court of the State of Colorado**  
2 East 14th Avenue • Denver, Colorado 80203

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**2024 CO 49**

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**Supreme Court Case No. 24SA23**  
*Interlocutory Appeal from the District Court*  
Boulder County District Court Case No. 22CR1786  
Honorable Patrick D. Butler, Judge

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**Plaintiff-Appellant:**

The People of the State of Colorado,

v.

**Defendant-Appellee:**

Martin Otonoel Cerda.

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**Order Affirmed in Part and Reversed in Part**

*en banc*

June 24, 2024

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**JUSTICE HOOD** delivered the Opinion of the Court, in which **CHIEF JUSTICE BOATRIGHT, JUSTICE MÁRQUEZ, JUSTICE GABRIEL, JUSTICE HART, JUSTICE SAMOUR,** and **JUSTICE BERKENKOTTER** joined.

JUSTICE HOOD delivered the Opinion of the Court.

¶1 The defendant, Martin Otonoel Cerda, has been charged with first degree murder in Boulder County. In this interlocutory appeal, the prosecution challenges the district court's suppression of statements Cerda made during custodial interrogation following his arrest. Although the detectives properly advised Cerda of his rights pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966), the district court found that they failed to scrupulously honor Cerda's right to remain silent once he invoked it. The court also found that Cerda's statements were involuntary and, therefore, wholly inadmissible at trial. We affirm the portion of the district court's order concluding that the detectives failed to scrupulously honor Cerda's invocation of his right to remain silent, reverse the portion concluding that Cerda's statements were involuntary, and remand the case for further proceedings consistent with this opinion.

### **I. Facts and Procedural History**

¶2 One night in the fall of 2022, a Larimer County sheriff's deputy observed a Ford Fusion fail to signal before turning and struggling to stay in one lane while leaving Loveland, Colorado. The deputy turned on his lights to conduct a traffic stop. Although the Ford initially seemed to slow down and pull over, it then accelerated. The deputy gave chase, as the Ford headed south toward Longmont, Colorado. Several other deputies joined the pursuit before it was ultimately called

off. Around midnight, after the Ford lost a front tire, it came to a stop at an intersection just north of Longmont.

¶3 S.N. and her daughter, T.S., in a truck heading east, happened to reach the same intersection at the same time. S.N. saw both the front passenger's- and driver's-side doors of the Ford fling open. A single gunshot rang out.

¶4 S.N. felt a bullet pass through her window, right next to her head. As she quickly drove away, S.N. realized that the bullet had hit T.S., who was bleeding and unresponsive. S.N. rushed to a nearby hospital, but doctors were unable to save T.S., who died from the bullet wound.

¶5 The four people in the Ford fled on foot, but law enforcement officers soon found them hiding in a camper on property near the intersection where the shooting occurred. Officers arrested all four suspects and transported them to the Boulder County Sheriff Headquarters. Two of the passengers told detectives that Cerda had been driving the Ford and had shot at S.N.'s truck so he could steal it. Cerda's wife, the fourth suspect, refused to talk.

¶6 Around 7:45 a.m., Detectives Robinson and Dillard turned their attention to Cerda. Detective Robinson's body-worn camera recorded the interrogation. The detectives began by leading Cerda into a ten-by-fifteen-foot interview room with a small table. On the way, they sent someone to get Cerda a bagel and some water.

They removed Cerda's handcuffs, and Detective Robinson advised Cerda of his rights from a department-issued card. The interrogation continued:

Det. Robinson: Do you understand each of these rights I've explained to you?

Cerda: Yes sir.

Det. Robinson: Having these rights in mind, do you want to talk to me now?

Cerda: No.

Det. Robinson: You don't—you don't want to talk to me?

Cerda: Yeah, I don't have anything to say. I don't really know what [unintelligible] ask about but—

Det. Dillard: So, here's a question for you, if you say, say that you understand your *Miranda* warnings—

Cerda: Yeah, I understand like I don't have to answer any questions you guys ask me, but like I'm not trying to hide anything so I mean you guys [unintelligible] can go ahead and ask a couple questions—

Det. Dillard: Okay, so, let me back up, um, so he read you this *Miranda* warning and so because we have to hear you say yes you understand your *Miranda* warnings and with that in mind, will you talk to us?

Cerda: No.

Det. Dillard: Okay, um, with that being said, we're not going to bug you, we're not going to talk. They'll bring the bagel; you can have the bagel.

Cerda: I'm not [unintelligible] like I said I'm not [unintelligible] you guys have a couple questions or whatever, spit-balling, or whatever.

Det. Robinson: You've told us—either you want to talk to us or you don't want to talk to us.

Cerda: I'd rather not talk to you guys. But, like I said, I'm not hiding anything.

¶7 Detective Dillard then explained to Cerda that “normally,” if he said “yes” he understood his rights and “yes” he would talk to them, he could still refuse to answer uncomfortable questions. Detective Dillard continued:

Det. Dillard: Is it changed? Do you want to talk to us now?

Cerda: No.

Det. Dillard: Okay.

Cerda: And this is on record, right? I do not want to talk to you guys.

Det. Robinson: Yes.

Det. Dillard: And so just so you understand at this point, what we're going to do is, uh, we're going to finish some paperwork, uh—you will be charged with murder.

Cerda: Murder?

Det. Dillard: Yeah.

Cerda: For who?

Det. Dillard: Well, the car you shot at, you killed the girl inside of it. And so you will be charged with it.

Cerda: What are you talking about? I did not shoot no car.

Det. Robinson: Well you didn't want to talk to us, so, we're not just going to volunteer information to you. We're telling you why you're under arrest and what's going to happen.

Cerda: I'm asking you guys, like I don't understand. I understand you guys say I'm not going to talk to you guys, but like –

Det. Robinson: Okay. Answer two questions for me. Do you understand your *Miranda* rights?

Cerda: Yes, I do, I do, like I don't have to answer any of you guys' questions.

Det. Robinson: Keeping these rights in mind, do you wish to talk to me now?

Cerda: Yeah. Well, see. Yeah, okay. I will talk to you guys so we can figure this out. But just like, I'm not – just so you guys know for the record, I do not cooperate with you – talking with you guys.

Det. Robinson: Well now –

Cerda: I mean, it's murder, so like –

Det. Robinson: You've told me yes; then you've told me no; and then you've told me yes; and then you've told me no.

Cerda: Yeah okay, so murder, so yeah okay, let's talk. You say murder, so okay yeah let's talk. What's the deal, like I don't understand. Who shot what?

¶8 The detectives asked one more time if Cerda understood his rights and if he wanted to speak with them, to which Cerda responded, "Yes, we're talking about it, yes." After agreeing to talk, Cerda stated that he had smoked "weed" and had



taken antipsychotic medication earlier that day,<sup>1</sup> which affected his ability to recall the details of the incident. He then denied ever shooting a gun and asked the detectives why they thought he had murdered someone. Detective Dillard responded that they had interviewed the three other suspects and “through all the[ir] interviews is why we are interviewing you right now.”

¶9 The detectives then placed a *Miranda* waiver form on the table. Following more back and forth about whether he would talk to them, Cerda said, “I’m taking it to the box. . . . There’s nothing to talk about. I didn’t do nothin’.” Detective Dillard told Cerda it was his and Detective Robinson’s job to figure out what had happened, at which point Cerda said that he had tossed a gun and it had gone off, but he didn’t know what the bullet had hit.

¶10 The detectives shifted their focus back to the waiver form and told Cerda they would leave the room to give him time to read it and to think about it. Cerda, visibly frustrated, again said he understood what was on the form, but that if they were going to take him to jail, then they should just take him to jail. Detective Robinson said they would give him a couple of minutes and would come back

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<sup>1</sup> Cerda told the detectives that he had woken up around 3 or 4 p.m. the day before his arrest. The shooting occurred about nine hours later, around 12 a.m. Cerda’s interrogation began around 7:45 a.m. So, references in this opinion to events “earlier that day” indicate the time between when Cerda woke up the previous afternoon and his arrest.

“when [he] had decided” whether he wanted to speak with them. Less than a minute later, the detectives returned and helped Cerda complete the form.

¶11 During the subsequent interrogation, Cerda made additional incriminating statements about the shooting. The detectives again told Cerda they had spoken with the three passengers who had been in the Ford with him. Cerda responded:

And I’m not trying to talk with you guys about stuff like that. Like, that’s not my [unintelligible]. If I’m being charged with murder, fuck, I better call my family, I need to call my family, they need to get the lawyer on the phone and we need to figure this out, because like I said, if that’s what they are trying to charge me with . . . .

¶12 Moments later, Detective Dillard left the room and spoke with an attorney who was watching the interrogation. The attorney told Detective Dillard to shut down questioning because Cerda had referenced an attorney. Meanwhile, Detective Robinson continued questioning Cerda, who made several additional incriminating statements about the shooting and stated that he had smoked and injected “H,” which he later clarified was an opiate, earlier that day (at least seven hours before the interrogation). Detective Dillard returned to the interrogation room:

Det. Dillard:           So I want to clarify. You do not want an attorney at this point, or do you?

Cerda:                    I do. Yeah, I do.

Cerda talked a little longer and, when he finished, the detectives told him it was “his life” and left the room.

¶13 The prosecution charged Cerda with multiple crimes, including first degree murder (extreme indifference). Before trial, Cerda moved to suppress the statements he made during the interrogation.

¶14 The district court granted the motion, finding that Cerda had “clearly invoked his right to remain silent” and that “law enforcement failed to scrupulously honor that invocation.” The court then suppressed Cerda’s statements from the prosecution’s case-in-chief.

¶15 The district court further concluded that because the prosecution “failed to prove by a preponderance of evidence that [Cerda’s] statements were voluntary,” the statements were wholly inadmissible at trial.

¶16 Lastly, the district court found that, although the “point [wa]s mooted,” Cerda had invoked his right to counsel, which provided another basis for suppression.

## **II. Analysis**

¶17 We first discuss our jurisdiction to hear this interlocutory appeal. We then identify the standard of review before canvassing familiar *Miranda* principles. Finally, we address the merits of the case before us.

### **A. Jurisdiction Under C.A.R. 4.1**

¶18 As a threshold matter, Cerda contends that we lack jurisdiction to hear this interlocutory appeal. We disagree.

¶19 When a district court grants a defendant’s motion to suppress, the prosecution may appeal that decision to this court, “provided that the state certifies . . . that the appeal is not taken for purposes of delay and that the evidence is a substantial part of the proof of the charge pending against the defendant.” C.A.R. 4.1(a); *see also* § 16-12-102(2), C.R.S. (2023). The prosecution invokes this source of jurisdiction here. Cerda counters that the evidence at issue is not a substantial part of the proof of the charges pending against him.

¶20 We have not previously decided whether we must accept facially valid certifications or whether we must evaluate those certifications to verify support in the record. *See People v. Bohler*, 2024 CO 18, ¶ 15, 545 P.3d 509, 514. We need not resolve this debate here because we have jurisdiction either way.

¶21 Cerda focuses on substantiality, so we do the same. The record reveals that Cerda’s statements make up a “substantial part of the proof of the” charges against him. First degree murder (extreme indifference) requires the prosecution to prove that Cerda “knowingly engage[d] in conduct which create[d] a grave risk of death to a person.” § 18-3-102(1)(d), C.R.S. (2023). His admission that he threw a loaded gun that then fired near the alleged victim goes directly to these elements. That record evidence suffices to give us jurisdiction to entertain this interlocutory appeal even if we chose not to accept the prosecution’s certification at face value.

## B. Standard of Review

¶22 A trial court’s suppression order presents a mixed question of fact and law. *People v. Coke*, 2020 CO 28, ¶ 10, 461 P.3d 508, 512. “We defer to the trial court’s factual findings where they are supported by sufficient evidence in the record, but we review the legal effect of those findings de novo.” *People v. Trujillo-Tucson*, 2022 CO 31, ¶ 14, 511 P.3d 621, 625.

## C. *Miranda* Protections

¶23 The federal and Colorado constitutions protect those suspected of crimes from compelled self-incrimination. U.S. Const. amend. V; Colo. Const. art. II, § 18. Consequently, when law enforcement officers subject a suspect to custodial interrogation, they must employ certain procedural safeguards, which include notifying a suspect of his right to remain silent. *Miranda*, 384 U.S. at 444–45; *Coke*, ¶ 13, 461 P.3d at 513.

¶24 To invoke the right to remain silent, a suspect isn’t required to use “special or ritualistic phrases.” *People v. Arroya*, 988 P.2d 1124, 1132 (Colo. 1999). Even so, the suspect “must clearly articulate the desire to remain silent so that a reasonable police officer in the circumstances would understand the suspect’s words and conduct to mean that the suspect is asserting [his] *Miranda* right to cut off questioning.” *Id.* at 1129–30.

¶25 After a suspect clearly states a desire to remain silent, “the interrogation must cease.” *Miranda*, 384 U.S. at 474. Law enforcement must then “scrupulously honor” the suspect’s invocation of his right to remain silent. *Arroya*, 988 P.2d at 1130; *see also Michigan v. Mosley*, 423 U.S. 96, 103–04 (1975). Doing so “counteracts the coercive pressures of the custodial setting” and ensures that law enforcement officers don’t pressure suspects into rethinking their decision to keep quiet. *Mosley*, 423 U.S. at 104.

## D. Application

### 1. Did Cerda Invoke His Right to Remain Silent?

¶26 There is no dispute that Cerda had been subjected to “custodial interrogation” and that *Miranda* protections therefore applied. The prosecution contends, however, that Cerda didn’t clearly invoke his right to remain silent. We disagree.

¶27 For a suspect’s invocation to be ambiguous, his words must carry “opposing inferences.” *Arroya*, 988 P.2d at 1136 (Kourlis, J., concurring in part and dissenting in part). Here, after advising Cerda of his rights, Detective Robinson asked, “Having these rights in mind, do you want to talk to me now?” Cerda responded, “No.” The word “no,” in the absence of any additional or qualifying expression, holds no opposing inferences. By uttering that word, Cerda unambiguously invoked his right to remain silent. *See People v. Bonilla-Barraza*, 209 P.3d 1090, 1096

n.9 (Colo. 2009); *United States v. Rambo*, 365 F.3d 906, 910 (10th Cir. 2004) (“There is no nuance nor context to vary the unequivocal meaning of Rambo’s single word, monosyllabic response. His response, ‘No,’ could only mean an invocation of his right to remain silent.”). A reasonable officer would have understood as much.

¶28 The prosecution asserts that despite saying “No,” Cerda continued talking, thus rendering his invocation ambiguous and unsuccessful. But Cerda didn’t immediately initiate further conversation. On the contrary, his next statement was a response to continued questioning, and a suspect’s “responses to further interrogation may not be used to cast retrospective doubt on the clarity of the initial” invocation. *Smith v. Illinois*, 469 U.S. 91, 100 (1984); accord *People v. Bradshaw*, 156 P.3d 452, 458–59 (Colo. 2007).<sup>2</sup>

¶29 Accordingly, we agree with the district court that Cerda invoked his right to remain silent. We now analyze whether the detectives scrupulously honored Cerda’s invocation of that right.

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<sup>2</sup> Although *Smith* discussed the right to counsel, “there is no principled reason to adopt different standards for determining when an accused has invoked the *Miranda* right to remain silent and the *Miranda* right to counsel.” *Berghuis v. Thompkins*, 560 U.S. 370, 381 (2010). Numerous federal circuits have applied *Smith* to right-to-silence cases. See, e.g., *United States v. Abdallah*, 911 F.3d 201, 211 (4th Cir. 2018); *Jones v. Harrington*, 829 F.3d 1128, 1140–41 (9th Cir. 2016); *Medina v. Singletary*, 59 F.3d 1095, 1100–01 (11th Cir. 1995).

## 2. Did the Detectives Scrupulously Honor Cerda's Invocation of His Right to Remain Silent?

¶30 The prosecution asserts that Cerda quickly changed his mind and decided to make a statement. A suspect who has invoked his right to remain silent may, of course, change his mind and decide to speak. When this allegedly occurs, “we consider the particular circumstances in which the police obtained the suspect’s statement,” including:

- (1) whether the police immediately ceased the initial interrogation upon the suspect’s request;
- (2) whether the police resumed questioning only after the passage of a significant period of time;
- (3) whether the police gave a fresh set of *Miranda* warnings prior to the second interrogation; and
- (4) whether the second interrogation was restricted to a crime that was not the subject of the first interrogation.

*Bonilla-Barraza*, 209 P.3d at 1095 & n.6; *see also Mosley*, 423 U.S. at 104–05.

¶31 Here, the detectives never ceased questioning Cerda. *See Bonilla-Barraza*, 209 P.3d at 1098; *Bradshaw*, 156 P.3d at 456–59; *United States v. Alexander*, 447 F.3d 1290, 1294 (10th Cir. 2006) (“[P]olice may reinitiate questioning, but only if . . . at the time the defendant invoked his right to remain silent, the questioning ceased.”). After Cerda’s first, unambiguous invocation of his right, Detective Robinson immediately asked, “You . . . don’t want to talk to me?” But nothing about Cerda’s “No” required clarification. *See Bradshaw*, 156 P.3d at 458 (“Only when an accused’s statements are ambiguous may police officers assert a legitimate interest in clarifying the accused’s intent.”).



¶32 In fact, despite some vacillation, Cerda confirmed several more times that he didn't want to talk—even ensuring he was “on record” saying as much. But the interrogation continued for another three and a half minutes before Detective Dillard said, “[J]ust so you understand, . . . you will be charged with murder.”<sup>3</sup> At this point, Cerda changed his mind and said, “Yeah, okay. I will talk to you guys so we can figure this out.”

¶33 The three remaining factors are less relevant to our discussion. Each assumes that law enforcement immediately ceased interrogation after the suspect invoked his right. But there can be no “resumption of questioning” if questioning never ceased. *Mosley*, 423 U.S. at 101; *Bonilla-Barraza*, 209 P.3d at 1098.

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<sup>3</sup> We generally don't consider it interrogation for officers to simply tell a suspect the charges against him. See *People v. Rivas*, 13 P.3d 315, 319 (Colo. 2000). Accordingly, providing this information typically doesn't trigger or violate *Miranda's* protections because it doesn't reflect “a measure of compulsion above and beyond that inherent in custody itself.” *Id.*; see also *People v. Wood*, 135 P.3d 744, 750 (Colo. 2006) (“Interrogation includes ‘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.’” (quoting *Rhode Island v. Innis*, 446 U.S. 291, 301 (1980))); accord *People v. Leyba*, 2019 COA 144, ¶ 17, 490 P.3d 483, 490. Here, however, the detectives knew or reasonably should have known that sharing this information after Cerda had repeatedly invoked his right to remain silent, which they failed to honor, was likely to elicit an incriminating response. See *Wood*, 135 P.3d at 749–50; see also *Innis*, 446 U.S. at 301–03. Therefore, under the totality of the circumstances, informing Cerda of the murder charge was part of the continuing interrogation, which violated Cerda's *Miranda* rights. See *People v. Gonzales*, 987 P.2d 239, 241 (Colo. 1999).

¶34 Cerda clearly and repeatedly invoked his right to remain silent, but the detectives failed to scrupulously honor it. Therefore, we agree with the district court that the prosecution may not use any statements Cerda made after invoking his right to remain silent in its case-in-chief. *See Bonilla-Barraza*, 209 P.3d at 1099.

¶35 But statements obtained in violation of *Miranda* may be used as rebuttal or impeachment evidence so long as they were voluntarily made. *Effland v. People*, 240 P.3d 868, 877 (Colo. 2010). We turn there now.<sup>4</sup>

### 3. Were Cerda's Statements Voluntary?

¶36 The Due Process clauses of the United States and Colorado constitutions “prevent[] admission of involuntary statements into evidence.” *Coke*, ¶ 17, 461 P.3d at 513. The prosecution bears the burden of proving “by a preponderance of the evidence that the defendant made the statement voluntarily.” *People v. Valdez*, 969 P.2d 208, 210 (Colo. 1998).

¶37 A voluntary statement is “the product of an essentially free and unconstrained choice.” *People v. Ramadon*, 2013 CO 68, ¶ 19, 314 P.3d 836, 842. An involuntary statement, on the other hand, is made after an “individual’s will has

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<sup>4</sup> We decline to address the prosecution’s argument that the district court erred by alternatively concluding that the detectives failed to honor Cerda’s invocation of his right to counsel. That issue is moot given the existing basis for suppression. *See DePriest v. People*, 2021 CO 40, ¶ 8, 487 P.3d 658, 662 (“[A]n issue becomes moot because any relief granted by the court would have no practical effect.”).

been overborne.” *Valdez*, 969 P.2d at 211. So, a statement is involuntary if (1) the government’s conduct was coercive and (2) that coercion “played a significant role in inducing” a confession or an inculpatory statement. *Ramadon*, ¶ 20, 314 P.3d at 842; see also *People v. Mendoza-Rodriguez*, 790 P.2d 810, 816 (Colo. 1990) (“To be voluntary, a statement ‘must not be extracted by any sort of threats or violence, nor obtained by any direct or implied promises, however slight, nor by the exertion of any improper influence.’” (quoting *Brady v. United States*, 397 U.S. 742, 753 (1970))).

¶38 To assess the voluntariness of a statement, courts consider the totality of the circumstances, including such factors as:

- (1) whether the defendant was in custody;
- (2) whether the defendant was free to leave;
- (3) whether the defendant was aware of the situation;
- (4) whether the police read *Miranda* rights to the defendant;
- (5) whether the defendant understood and waived *Miranda* rights;
- (6) whether the defendant had an opportunity to confer with counsel or anyone else prior to or during the interrogation;
- (7) whether the statement was made during the interrogation or volunteered later;
- (8) whether the police threatened [the] defendant or promised anything directly or impliedly;
- (9) the method or style of the interrogation;

- (10) the defendant's mental and physical condition just prior to the interrogation;
- (11) the length of the interrogation;
- (12) the location of the interrogation; and
- (13) the physical conditions of the location where the interrogation occurred.

*Ramadon*, ¶ 20, 314 P.3d at 842 (alteration in original).

¶39 Here, the district court made findings as to many of these factors. It found that Cerda was in custody when he made the statements and was aware that he was under arrest, but he was unrestrained during the interrogation. The court also found that Cerda was properly advised and understood his rights, and that the detectives didn't make any threats or promises. It found that the detectives remained calm and conversational during the interrogation, which lasted only about twenty minutes. The court, however, also noted that the detectives

continued to speak to [Cerda] in an attempt to get him to agree to talk after he clearly invoked his right to remain silent. This type of method and style of interrogation is in direct conflict with the state[d] purposes of *Miranda* and *Mosley*, in which officers are required to counteract coercive custodial pressures after a Defendant has clearly invoked his right to remain silent.

¶40 Lastly, the district court summarized Cerda's mental and physical condition, his background, and his experience with law enforcement, finding that Cerda (1) had ingested an opiate seven to eight hours before the interrogation and said he was intoxicated and couldn't remember what had happened the day

before; (2) was on antipsychotic medication that affected his cognitive abilities; (3) had been awake for approximately sixteen hours when the interrogation began; (4) is a felon; and (5) was homeless. The court further observed that the recording “presented [Cerda] as a person who was under the influence of an unknown intoxicating substance” because “[h]e consistently slurred his words, mumbled, and did not appear completely sober.” The court noted that Cerda “was arrested at gunpoint with multiple officers from multiple agencies pointing lethal weapons at him” just a few hours before the interrogation and that “this had a significant impact on his mental condition leading up to the interview.”

¶41 The court ultimately concluded that, under the totality of the circumstances, the prosecution had failed to prove by a preponderance of the evidence that Cerda’s statements were voluntary.

¶42 In reaching this conclusion, the court acknowledged that the detectives made no threats or promises, and they employed no physical coercion. But the court emphasized the detectives’ use of “subtle pressure tactics”: (1) the continued questioning of Cerda in violation of *Miranda*; (2) the statement that Cerda would be charged with murder, coupled with the factual allegations against him; and (3) the lie that all of Cerda’s co-suspects had agreed to talk (when only two of the three had actually done so).

¶43 We have generally held that it isn't coercive for detectives to misrepresent that other suspects have agreed to cooperate with law enforcement. *See Frazier v. Cupp*, 394 U.S. 731, 739 (1969); *cf. People v. Smiley*, 2023 CO 36, ¶¶ 25–26, 530 P.3d 639, 646 (same in the context of the voluntariness of a waiver). Nor do we usually consider it coercive to inform a suspect of the potential charges or factual allegations against him. *See People v. Rivas*, 13 P.3d 315, 320 (Colo. 2000) (stating that the detective's "recitation of the charges" included "information a defendant would normally want, and be entitled, to know upon being taken into custody"). *But see People v. Humphrey*, 132 P.3d 352, 361–62 (Colo. 2006) (concluding that, under certain circumstances, belatedly explaining the gravity of the charges the accused is facing may be deemed coercive).

¶44 But failing to scrupulously honor a suspect's clear invocation of his right to remain silent by continuing to question him is coercive. *See Mosley*, 423 U.S. at 105; *see also United States v. Coriz*, No. 17-1105-JCH, 2018 WL 4222383, at \*10 (D.N.M. Sept. 5, 2018) (concluding that the detective's failure to scrupulously honor the defendant's repeated invocations of the right to remain silent, by continuing to question him, "weigh[ed] strongly in favor of a finding of coercion"). After all, the rule requiring all questioning to cease upon a suspect's invocation of his *Miranda* rights "is 'designed to prevent police from badgering a defendant into waiving his previously asserted *Miranda* rights.'" *Davis v. United States*, 512 U.S. 452, 458 (1994)

(quoting *Michigan v. Harvey*, 494 U.S. 344, 350 (1990)); see also *Smiley*, ¶ 27, 530 P.3d at 646 (explaining that the law disfavors tactics that “directly undercut *Miranda*’s intended protections”).

¶45 Still, we conclude that this coercive conduct failed to play a significant role in inducing the inculpatory statements at issue here.<sup>5</sup> See *United States v. Umaña*, 750 F.3d 320, 345 (4th Cir. 2014) (“The mere existence of threats, violence, implied promises, improper influence, or other coercive police activity . . . does not automatically render a confession involuntary.” (omission in original) (quoting *United States v. Braxton*, 112 F.3d 777, 780 (4th Cir. 1997))). Cerda was hard to understand at times because he spoke quickly and sometimes mumbled or slurred his words, but he demonstrated an awareness of his situation and the consequences of speaking. He also said that he was a felon and had been in jail before, so he was familiar with the process.

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<sup>5</sup> The voluntariness question is not simply whether Cerda might have refrained from making any statement “but for” the detectives’ failure to scrupulously honor his invocation of his right to remain silent. Although the *Miranda* court stated that an accused is “involuntarily impelled to make a statement when *but for* the improper influences he would have remained silent,” 384 U.S. at 462 (emphasis added) (quoting *Bram v. United States*, 168 U.S. 532, 549 (1897)), the Supreme Court has since explicitly abandoned a causation approach, e.g., *Arizona v. Fulminante*, 499 U.S. 279, 285 (1991). The crucial inquiry instead is whether, under the totality of the circumstances, any government actor’s improper influence succeeded in overbearing the suspect’s will. See 2 Wayne R. LaFave et al., *Criminal Procedure* § 6.2(c) nn. 95–98, Westlaw (4th ed. database updated Dec. 2023).

¶46 Although Cerda appeared frustrated with having to repeatedly tell the detectives he understood his rights, overall, his demeanor was calm and conversational. The detectives were also calm and conversational, and, again, they never made any threats or promises to induce Cerda to waive his rights. Cerda even ate the bagel and drank the water the detectives gave him as he talked to them.

¶47 In short, the totality of the circumstances surrounding the interrogation indicates that the detectives' failure to scrupulously honor Cerda's invocation of his right to remain silent didn't overbear Cerda's will. *See Ramadan*, ¶ 20, 314 P.3d at 842 (explaining that the voluntariness inquiry requires that "[c]ourts look at both the defendant's ability to resist coercive pressures and the nature of the police conduct"); *United States v. Carroll*, 207 F.3d 465, 472 (8th Cir. 2000); *cf. Humphrey*, 132 P.3d at 361.

¶48 Therefore, we conclude that Cerda's statements were voluntary.

### **III. Conclusion**

¶49 We affirm the district court's suppression, during the prosecution's case-in-chief, of any statements Cerda made after he invoked his right to silence. We conclude, however, that those statements were voluntary and therefore reverse the district court's conclusion to the contrary. We remand this case to the district court for further proceedings consistent with this opinion.