IN THE COURT OF APPEALS OF THE STATE OF NEVADA

EMANUEL PALOMARES, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 90945-COA

ORDER OF AFFIRMANCE AND LIMITED REMAND TO CORRECT CLERICAL ERROR

Emanuel Palomares appeals from a judgment of conviction, pursuant to a jury verdict, of trafficking in a schedule I or II controlled substance, 400 grams or more.[1] Second Judicial District Court, Washoe County; David A. Hardy, Judge.

The Reno Police Department (RPD) dispatched officers to a Berrum Lane apartment complex after a 9-1-1 caller reported that a Hispanic male in a red shirt had threatened to shoot him. As Officer Casey Thomas approached on foot shortly after 2:00 a.m., he saw a man matching that description—later identified as Palomares—and watched him throw a black object with both hands over a wooden fence onto the patio of an adjacent unit. Given the nature of the call, Officer Thomas believed the object might be a firearm.

[1]We note that an apparent clerical error within the judgment of conviction states that Palomares pleaded guilty to trafficking in 400 grams or more in schedule I or II controlled substances, a category A felony under NRS 453.3385(1)(b). Palomares did not plead guilty; he exercised his right to a jury trial and was found guilty by the jury on the sole count charged. Because the district court has authority to correct a clerical error at any time, *see* NRS 176.565, we direct the court, upon limited remand, to enter an amended judgment of conviction reflecting the jury's verdict.

After officers approached Palomares, they observed that he was non-responsive to their questions, apparently due to a language barrier. Officers then detained Palomares for officer safety by handcuffing him, conducting a pat-down for weapons, and seating him on the sidewalk. When Officer Thomas asked in English what he had thrown, Palomares did not respond and appeared not to understand. Officer Thomas then located a black backpack sitting upright on the neighboring patio, obtained the consent of the unit's residents—who appeared to have no connection to it—to enter, and retrieved the backpack from where it had landed.

Recognizing a language barrier, officers requested a Spanish-speaking police officer, Jose Hernandez, to act as a telephonic interpreter, and through him asked Palomares what he had thrown, why he had thrown it, whether the backpack was his, and for consent to search it. Palomares gave shifting answers over the next several minutes, variously denying ownership and attributing the backpack to a neighbor and to his girlfriend. He eventually said "[y]es, I threw the bag. I'm not going to deny that to you." Palomares was not advised of his *Miranda* rights before being asked any questions. *See Miranda v. Arizona*, 384 U.S. 436 (1966). We refer to the statements elicited during this encounter as the "Berrum Lane statements."

When officers opened the backpack, they found four large baggies of purple powder consistent with fentanyl in a quantity far greater than Officer Thomas typically encountered. Officers evacuated the area and formally arrested Palomares. A forensic criminalist later confirmed the substance was fentanyl and the gross weight of the packages was approximately eight pounds. The only other item in the backpack was a pair of surgical gloves. Officers had observed Palomares using his cell

phone during the initial contact, the phone continued to light up and ring during the detention, and officers seized it incident to arrest.

After transport to the RPD station, Officer Brown conducted a custodial interview using a separate telephonic Spanish interpreter—not a police officer—to deliver the *Miranda* advisement, later assisted in person by Officer Hernandez. Because the initial phone connection was poor, Officer Brown read and re-read the rights to confirm that the interpreter understood his English and that Palomares understood the Spanish translation. The interpreter at one point described an attorney as someone who would protect Palomares' rights "in court," and the operative counsel advisement, as Officer Brown reiterated it, was that Palomares could exercise his rights "at any time," and did not have to answer questions without a lawyer. Palomares indicated he understood and agreed to speak. In the interview, he gave several conflicting accounts of how he obtained the backpack, at times denying knowledge of the contents yet eventually acknowledging there were "packages" in the backpack.

Detective Jenkins requested a warrant to search Palomares' phone. His supporting affidavit detailed his narcotics-investigation training and articulated case-specific facts: officers saw Palomares manipulating the phone while carrying the backpack, clutching the phone during the initial contact with police before his detention, the phone continued to receive calls and messages during the detention, and Palomares admitted receiving directions from unidentified persons to deliver the backpack. The warrant sought call logs, contacts, messages, photographs, audio, third-party application data, indicia of ownership, and geolocation data, but limited the requested search to the two-day period

immediately preceding the arrest. A judge found probable cause to search for specific items over the two-day period and issued the warrant.

The State charged Palomares by information with one count of trafficking in a Schedule I or II controlled substance, 400 grams or more, a category A felony. As relevant here, he filed three pretrial motions, seeking to suppress (1) his Berrum Lane statements, (2) his RPD-station statements, and (3) the cell-phone evidence. He separately moved to suppress physical evidence including the backpack and its contents but does not challenge the denial of that motion on appeal. After a multi-day evidentiary hearing, the district court denied the motions in a written order. The court found that the stop was a lawful *Terry* detention[2] and that custody was "a close question" that did not rise to the level of arrest requiring a *Miranda* warning. The court further found that the public-safety exception applied in the alternative, thereby obviating the need for a *Miranda* warning. Additionally, the court upheld the Spanish-language *Miranda* advisement and waiver at RPD, and sustained the warrant to search the cell phone, thereby concluding that the evidence could be used at trial. The jury convicted Palomares of drug trafficking, and the district court sentenced him to 10 to 25 years in prison. This appeal followed.

On appeal, Palomares challenges the district court's denial of those three pretrial motions. He argues that the Berrum Lane statements should have been suppressed because the on-scene questioning constituted custodial interrogation without *Miranda* warnings. He also contends that his statements made during the subsequent interview at the RPD station should have been suppressed because the Spanish-language *Miranda*

[2]*See generally Terry v. Ohio*, 392 U.S. 1 (1968).

advisement and waiver were invalid. Finally, he argues the data retrieved from his cell phone should have been suppressed because the warrant affidavit did not establish probable cause and was overbroad and insufficiently particularized.

The State responds that the constitutionality of the questioning during the brief detention turns on a *Terry*-stop analysis, not a *Miranda*-advisement analysis. It argues the statements made by Palomares during the encounter at Berrum Lane were not made during a custodial interrogation, rendering *Miranda* inapplicable. In any event, the State argues the statements are further insulated from the advisement requirement under the public-safety exception. As to statements made by Palomares during the RPD station interview, the State contends that the police provided an adequate *Miranda* advisement through an interpreter. It also submits that the district court did not err by admitting Palomares' cell-phone data into evidence—arguing the search warrant was constitutionally valid as it was supported by probable cause and was specific and narrow in scope. Further, the State asserts the police acted in good faith reliance on the warrant. The State also argues that any errors were harmless beyond a reasonable doubt in light of overwhelming evidence in the record of Palomares' guilt. We address all issues in turn.

The Berrum Lane encounter became a custodial interrogation

Palomares contends that officers subjected him to a custodial interrogation at Berrum Lane without first administering *Miranda* warnings, and that the district court therefore erred by declining to suppress his on-scene statements. He argues the encounter was custodial because he was handcuffed, patted down, seated on the ground, surrounded by officers, and asked incriminating questions through an interpreter. The

State responds that officers were conducting a lawful investigatory detention under *Terry* following a firearm-threat call; that handcuffing did not automatically convert the detention into custody; and that the questioning was brief, public, and tethered to the detention's safety purpose. In reply, Palomares emphasizes the coercive character of the encounter—particularly the officer-interpreter's relayed instruction to tell the truth or be taken to jail—and argues the authorities cited by the State involved no comparable level of restraint.

Miranda establishes procedural safeguards "to secure and protect the Fifth Amendment privilege against compulsory self-incrimination during the inherently coercive atmosphere of an in-custody interrogation." *Dewey v. State*, 123 Nev. 483, 488, 169 P.3d 1149, 1152 (2007). "[A] trial court's custody and voluntariness determinations present mixed questions of law and fact subject to . . . de novo review" by the appellate courts. *Carroll v. State*, 132 Nev. 269, 281, 371 P.3d 1023, 1031 (2016) (quoting *Rosky v. State*, 121 Nev. 184, 190, 111 P.3d 690, 694 (2005)). We defer to the district court's findings of fact that are supported by the record but review de novo the ultimate legal conclusion regarding custody. *Belcher v. State*, 136 Nev. 261, 264, 464 P.3d 1013, 1021 (2020). "To be constitutionally adequate, *Miranda* warnings must be sufficiently 'comprehensive and comprehensible when given a commonsense reading.'" *Stewart v. State*, 133 Nev. 142, 146, 393 P.3d 685, 688 (2017) (quoting *Florida v. Powell*, 559 U.S. 50, 63 (2010)).

"A defendant is 'in custody' under *Miranda* if he or she has been formally arrested or his or her freedom has been restrained to 'the degree associated with a formal arrest so that a reasonable person would not feel free to leave.'" *Carroll*, 132 Nev. at 282, 371 P.3d at 1032 (quoting *State v.*

Taylor, 114 Nev. 1071, 1082, 968 P.2d 315, 323 (1998)). This is determined by the totality of the circumstances. *Id.* Those circumstances include the interrogation site, any objective indicia of arrest, "and the length and form of questioning." *Id.* (quoting *Taylor*, 114 Nev. at 1082, 968 P.2d at 323). Absent a formal arrest, the question is whether a reasonable person in the suspect's position would objectively feel at liberty to terminate the interrogation and leave. *Rosky*, 121 Nev. at 191-92, 111 P.3d at 695. The supreme court has identified seven non-dispositive objective indicia of arrest—including: (1) whether the suspect was told that the questioning was voluntary or that he was free to leave; (2) whether the suspect was not formally under arrest; (3) whether the suspect could move about freely during questioning; (4) whether the suspect voluntarily responded to questions; (5) whether the atmosphere of questioning was police-dominated; (6) whether the police used strong-arm tactics or deception during questioning; and (7) whether the police arrested the suspect at the termination of questioning. *Taylor*, 114 Nev. at 1082 n.1, 968 P.2d at 323 n.1.

Here, the district court recited the relevant custody factors and recognized the seven indicia subfactors, but it did not make findings under those subfactors or weigh them. Instead, it resolved custody based chiefly on the fact that the interrogation took place in a public location and the brief, limited nature of the questioning. The court treated the effect of handcuffing during a *Terry* stop as an issue our courts had not addressed. This is incorrect. The district court's framing of the handcuffing issue as novel is erroneous because *Belcher*, which the court cited in its decision, clearly analyzed handcuffing within the objective-indicia inquiry and

treated it as evidence that a defendant was not free to leave, and therefore indicative of arrest. *See* 136 Nev. at 266, 464 P.3d at 1022.

Also here, just as in *Belcher*, "[w]ith the exception of being placed under formal arrest before the interview, all the objective indicia of arrest are present in this case." *Id.* Upon our review of the facts, the primary indicium that appears to point away from custody is that Palomares was not formally under arrest until the backpack was opened. However, this is the same posture the supreme court found insufficient to defeat a custody finding in *Belcher*. *Id.* Also notable, here, the federal authorities on which the district court relied establish only that handcuffing does not per se create custody. *See United States v. Leshuk*, 65 F.3d 1105, 1110 (4th Cir. 1995) ("From these standards, we have concluded that drawing weapons, handcuffing a suspect, placing a suspect in a patrol car for questioning, or using or threatening to use force does not necessarily elevate a lawful stop into a custodial arrest for *Miranda* purposes."); *United States v. Manbeck*, 744 F.2d 360, 379 (4th Cir. 1984) ("In addition, Brogden was not formally placed under arrest, nor frisked or handcuffed, nor was he threatened, pressured, or abused.").

Those cases are merely persuasive, not binding, nor should they displace Nevada's factor-driven analysis. Moreover, to suggest that the custodial determination was a "close call" only stresses the need for the district court to make specific and detailed findings on the custody factors and, most notably, the seven objective indicia of arrest subfactors. *See Rosky,* 121 Nev. at 191, 111 P.3d at 695 (explaining that "trial courts must exercise their responsibility to make factual findings when ruling on motions to suppress" (internal quotation marks omitted)); *see also Carroll*, 132 Nev. at 281, 371 P.3d at 1031-32 ("We again remind the district courts

of their duty to enter a proper order with factual findings and legal conclusions when ruling on motions to suppress in order to facilitate appellate review.").

Like the district court, the State's answering brief does not meaningfully engage in this seven-part indicia subtest; it rests on the general proposition that handcuffing is not automatically custodial and stresses the public location and brevity of the encounter, but never works through the requisite seven-part indicia. Therefore, the controlling Nevada authority providing guidance on the merits of whether Palomares was in custody, thereby requiring *Miranda* warnings, is left undeveloped by the State defending the district court's ruling. While we acknowledge that the detention occurred in a public place and the questioning was not lengthy, the other factors all suggest that the initial investigatory detention eventually became a custodial interrogation. Thus, we conclude that the district court erred in determining that Palomares was not in custody during the entire Berrum Lane encounter prior to his arrest.

But even though the Berrum Lane encounter became custodial and questioning proceeded without *Miranda* warnings, that conclusion does not end our inquiry in light of the district court's alternative finding that the public-safety exception obviated the need for *Miranda* warnings. Thus, we address the extent to which the public-safety exception applied in the next section.

In addition, a *Miranda* violation is a constitutional error, but it is not structural, and it is therefore tested for harmlessness. *See Carroll*, 132 Nev. at 287, 371 P.3d at 1035 (concluding "other powerful evidence" of the defendant's guilt demonstrated a *Miranda* violation was harmless error); *see also Boehm v. State*, 113 Nev. 910, 916, 944 P.2d 269, 273 (1997)

(applying harmless-error analysis to a statement admitted at trial in violation of *Miranda*); *United States v. Butler*, 249 F.3d 1094, 1101 (9th Cir. 2001) (holding that improperly admitted *Miranda* statements were harmless in light of the defendant's spontaneous admissions and the large quantity of physical evidence lawfully seized and admitted at trial). The dispositive inquiry is whether it is "clear beyond a reasonable doubt that a rational jury would have found the defendant guilty absent the error." *Neder v. United States*, 527 U.S. 1, 18 (1999); *see also Chapman v. California*, 386 U.S. 18, 23-24 (1967) (clarifying that constitutional error is reviewed for harmlessness beyond a reasonable doubt).

As we explain below, the State squarely argued harmlessness and carried its burden, so—unlike in *Belcher*, where the State forfeited the issue by failing to address it, 136 Nev. at 267, 464 P.3d at 1023—we must consider whether any error in admitting the Berrum Lane statements was harmless. We therefore reserve further consideration of the constitutional error in admission of the Berrum Lane statements for our subsequent harmless-error analysis.

The public-safety exception to a Miranda *advisement authorized the initial safety-driven questions at Berrum Lane*

Palomares next argues that the public-safety exception did not justify the Berrum Lane questioning because the officers' questions exceeded any immediate need to locate or secure a firearm. He contends that once officers retrieved and secured the backpack, any weapon was no longer at large, so the questions that followed—about ownership, why he threw the backpack, and consent to search—were investigatory. The State responds that officers reasonably believed the object Palomares threw could be a firearm and properly asked limited safety-related questions to determine whether the backpack contained a weapon or other dangerous

item. The district court agreed with the State, finding that even assuming *Miranda* otherwise applied, the officers' questions about what Palomares threw and whether it was dangerous were "reasonably prompted by a concern for public safety," and it admitted the on-scene statements on that basis.

The public-safety exception to the *Miranda* rule permits unwarned questioning when officers face an objectively reasonable need to protect themselves or the public from immediate danger, provided the questions are not designed solely to elicit testimonial evidence. *See Lamb v. State*, 127 Nev. 26, 33-35, 251 P.3d 700, 704-06 (2011) (citing *New York v. Quarles*, 467 U.S. 649, 657-60 (1984)); *see also United States v. Basher*, 629 F.3d 1161, 1167 (9th Cir. 2011) (holding pre-*Miranda* questioning permissible where questions are related to "an objectively reasonable need to protect the police or the public from any immediate danger associated with the weapon" (quoting *Quarles*, 467 U.S. at 659 n.8)).

This exception covers the initial line of inquiry here—the questions aimed at whether the just-thrown object contained a weapon. In particular, officers responded to a specific firearm-threat call, saw Palomares throw an unknown object—later determined to be a backpack—onto a resident's patio in the dark, and had to recover and examine the backpack of unknown contents. Under these circumstances, the risk of injury from someone potentially mishandling an unknown firearm supplied a sufficient safety basis for the initial line of questions, when the questions were narrowly tailored to address a weapon. That Palomares was handcuffed does not alter the objective reasonableness of the safety questions under those circumstances. *Cf. Lamb*, 127 Nev. at 35, 251 P.3d at 706 ("While the question is close, we agree with the district court that

Lamb being handcuffed did not neutralize the emergent risk to the police of the protective sweep and/or search they were about to conduct, or convert their quick questions about people, dogs, or weapons from self-protective to investigatory."); *Quarles*, 467 U.S. at 655-56 (applying the public-safety exception although the defendant was "surrounded by at least four police officers and was handcuffed when the questioning at issue took place" and "there was nothing to suggest that any of the officers were any longer concerned for their own physical safety").

Palomares is correct, however, that the exception is narrow and distinguishes neutralizing danger from gathering evidence. *Lamb*, 127 Nev. at 34, 251 P.3d at 705. Thus, to the extent the questioning shifted after the backpack was in the officers' hands to the general contents of the backpack, ownership, motive, and consent, that later questioning is not justified by this exception under an objective assessment. However, we recognize that once fentanyl was discovered, a new safety issue emerged. Nevertheless, we need not decide how far the exception extends in this case, because—as explained below—any error in admitting the Berrum Lane statements was harmless beyond a reasonable doubt.

The Spanish-language Miranda *advisement and waiver at the RPD station were constitutionally adequate*

Palomares next contends that the *Miranda* advisement at the RPD station was constitutionally inadequate because the interpreter's warning was initially unintelligible and failed to clearly convey his right to consult counsel before questioning, suggesting instead that counsel would protect his rights "in court." He, thus, posits that the *Miranda*-advisement was insufficient and the district court should have suppressed all statements proffered from the interview at the RPD station. The State responds that Officer Brown took several minutes to read and re-read

Palomares his *Miranda* rights through a neutral telephonic interpreter, confirmed that the interpreter understood him and that Palomares understood the translation, and advised Palomares that he could ask for an attorney at any time. As a result, the State contends that the advisement was more than sufficient.

We review the constitutional adequacy of a *Miranda* advisement de novo. *See Carroll*, 132 Nev. at 281, 371 P.3d at 1031. *Miranda* requires that a suspect be informed of the right to remain silent and the right to counsel both before and during questioning, but no precise formulation is required; the advisement regarding counsel need only reasonably convey the right. *See Stewart*, 133 Nev. at 146, 393 P.3d at 688 (upholding an advisement that, though not the clearest possible formulation, reasonably conveyed the right to counsel before and during questioning); *see also Powell*, 559 U.S. at 60, 62-63 (holding that warnings advising a suspect he may invoke counsel at any time during the interview adequately convey the right to counsel during questioning); *Duckworth v. Eagan*, 492 U.S. 195, 203 (1989) (warnings need not be parsed as if construing a will and suffice if, in their totality, they reasonably convey the suspect's rights).

Measured against these standards, the advisement was adequate. The clearest *Miranda*-advisement told Palomares that he "could have a lawyer at any time, if [he] wishes," and that he did not have to answer questions without a lawyer. Advising Palomares that he could request counsel "at any time" necessarily reaches both the pre-questioning and during-questioning stages. *See Stewart*, 133 Nev. at 146, 393 P.3d at 688; *Powell*, 559 U.S. at 62-63. In addressing this advisement below, the district court found that Officer Brown did not simply recite the rights once

and move on, but instead repeated and clarified the advisement. The court further found that Officer Brown used a neutral telephonic interpreter to relay the advisement to Palomares and confirmed mutual understanding. Additionally, the court found that Palomares asked clarifying questions about counsel before acknowledging that he understood the advisement and agreed to speak. Those findings are supported by the record and entitled to deference, and the advisement, taken as a whole, reasonably conveyed the right to counsel.

Palomares's reliance on *Ajay v. State*, 142 Nev., Adv. Op. 4, 582 P.3d 627 (2026), is misplaced. In *Ajay*, the detective delivered all warnings in English, ignored repeated requests for an interpreter, and resorted to utilizing confusing improvised props to attempt to convey the advisement, leading the supreme court to hold the waiver insufficient under the knowing-and-intelligent requirement. *Id.* at 630-31; *see also Miranda*, 384 U.S. at 444 (holding valid waiver of the right to counsel must be made knowingly, intelligently, and voluntarily). *Ajay* holds that when the totality of the circumstances shows a limited-English-proficiency suspect cannot understand the warnings as given, law enforcement must recognize that an interpreter is necessary and may not simply persist in English. 582 P.3d at 630-31.

Here the officers did the opposite: once they recognized the language barrier, they used a neutral Spanish interpreter to deliver the advisement and a Spanish-speaking officer to assist. That is the very accommodation *Ajay* faulted the police for omitting in that case, and it aligns this case with the decisions *Ajay* distinguished, in which limited-English-proficiency defendants validly waived *Miranda* rights where their rights were conveyed in their own language and they indicated

understanding. We therefore conclude the district court did not err in finding that Palomares was properly advised of his *Miranda* rights and that he knowingly and voluntarily waived them in the RPD station interview. Therefore, the district court properly denied Palomares' motion seeking suppression of statements made during that interview.

The warrant for the cell-phone search was constitutional under the Fourth Amendment

Palomares argues that the warrant to search his cell phone was not supported by probable cause and was unconstitutionally overbroad. Relying on *Acosta v. State*, 141 Nev., Adv. Op. 40, 573 P.3d 1258 (2025), he contends the State justified the search through the generalized assertion that traffickers use phones and failed to establish a nexus between his phone and the offense while permitting an overbroad search of private data. The State responds that *Acosta* is distinguishable because the supporting affidavit in this case articulated drug trafficking-specific facts and that the warrant was particularized and limited in scope to specified categories of data generated within the two days before the phone was seized.

We review a suppression ruling on a search warrant for clear error as to the district court's findings of fact and de novo as to questions of law, deferring to the issuing court's probable-cause determination. *Acosta*, 573 P.3d at 1265. A warrant must identify the items to be seized, connect them to criminal activity, and describe them with particularity. *State v. Allen*, 119 Nev. 166, 170, 69 P.3d 232, 235 (2003). A warrant to search a digital device must be supported by probable cause and must be sufficiently particularized to avoid becoming a general warrant. *Acosta*, 573 P.3d at 1266-67.

Here, the district court denied suppression, finding that the affidavit established probable cause and a nexus to the trafficking offense.

The court distinguished this warrant from that of a "general warrant," emphasizing its two-day limitation, holding the warrant valid and finding, in any event, that officers reasonably relied upon it.

In *Acosta*, the supreme court invalidated a sweeping cell phone search that rested on little more than the proposition that criminals use phones and that lacked meaningful limits. *Id.* But the warrant affidavit at issue here is significantly more tailored than the one in *Acosta*. Here, the warrant was limited to a two-day window and to data types reasonably associated with drug trafficking, including call logs, messages, photographs, audio, application data, geolocation, and indicia of ownership. Further, the supporting affidavit articulated a concrete nexus: officers saw Palomares actively using the phone while carrying the backpack, he clutched it during his initial detention, and he told officers he was following directions from unknown persons to deliver the backpack, and the phone kept alighting during his detention at 2:00 a.m. Collectively, the foregoing facts demonstrate this was not a general or limitless search warrant like the one invalidated by the *Acosta* court, and it satisfies both the probable-cause and particularity requirements.[3]

But even if some overbreadth could be discerned in the warrant, the good-faith exception would apply such that the evidence obtained through the search need not have been suppressed. *See United States v. Leon*, 468 U.S. 897, 922-23 (1984) (holding that evidence obtained under a warrant later found unsupported by probable cause need not be suppressed

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[3]Palomares separately contended that the affidavit was misleading and sought a hearing under *Franks v. Delaware*, 438 U.S. 154 (1978). The district court declined to order such a hearing because Palomares made no substantial preliminary showing of a knowing, intentional, or reckless falsehood material to probable cause. We agree.

when officers acted in objectively reasonable reliance on a neutral magistrate's probable-cause determination). The warrant issued before the decision in *Acosta*, but the affidavit was not bare bones, the officers' reliance on it was objectively reasonable, and suppression would serve no deterrent purpose. By contrast, *Acosta* declined to apply the good-faith exception only because the affidavit there was so lacking in indicia of probable cause as to render reliance unreasonable—a circumstance not present here. *See* 573 P.3d at 1267. Moreover, Palomares did not rebut the State's reliance on the good-faith exception set forth in *Leon*. *See generally Ozawa v. Vision Airlines, Inc.*, 125 Nev. 556, 563, 216 P.3d 788, 793 (2009) (treating a party's failure to respond to an argument as a concession that the argument is meritorious); *cf. Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (issues not cogently argued or supported need not be considered on appeal). Thus, we discern no error in the denial of the motion to suppress the cell-phone evidence. And even if there were error, the good-faith exception would apply, so no relief is warranted.

Any error in admitting the challenged Berrum Lane statements was harmless beyond a reasonable doubt

Palomares argues that the challenged Berrum Lane statements were pivotal because they linked him to the backpack and established knowing possession of a trafficking quantity of fentanyl. The State responds that any error in the admission of the Berrum Lane statements was harmless because the evidence of possession was overwhelming. In reply, Palomares asserts that the evidence was not as overwhelming as the State suggests because officers did not know what the backpack contained until they opened it, the backpack sat upright as though placed rather than thrown, and, given the firearm-threat call, one might have expected a weapon to be present rather than a drug-filled backpack. *See* NRS 453.3385

(criminalizing knowingly or intentionally selling, manufacturing, delivering or bringing into this State, or being in actual or constructive possession of a trafficking quantity of a Schedule I or II controlled substance or mixture thereof).

Constitutional error, including a *Miranda* violation, normally requires reversal unless the State proves beyond a reasonable doubt that the error did not contribute to the verdict. *Belcher*, 136 Nev. at 267, 464 P.3d at 1023; *Chapman*, 386 U.S. at 24. The relevant considerations for determining whether an error is harmless include the importance of the challenged evidence to the prosecution, whether it was cumulative, the presence of corroborating or contradicting evidence, and the overall strength of the State's case. *Newson v. State*, 139 Nev. 88, 94, 526 P.3d 717, 723 (2023).

Here, evidence independent of Palomares' Berrum Lane statements provides overwhelming proof of his guilt notwithstanding any constitutional violation arising from the unwarned police questioning that was unrelated to the public-safety exception. That independent evidence demonstrates beyond a reasonable doubt that any such error did not contribute to the verdict. Palomares' contrary points—chiefly that no gun was discovered—do not undermine the strong evidence presented to the jury on the trafficking count. In particular, the evidence demonstrated that Palomares was seen discarding a backpack at 2:00 a.m. as soon as police were on the scene, the backpack was recovered where it landed with eight pounds of fentanyl inside, and no one else claimed a possessory interest in the backpack except Palomares. The evidence further demonstrated that Palomares' cell phone was alighting and receiving calls, and that Palomares subsequently admitted to possessing and discarding the backpack, which he

knew contained "packages," during the properly *Mirandized* RPD-station interview. Thus, even if we were to set aside every challenged statement elicited during the Berrum Lane encounter but consider all other evidence properly admitted at trial, no rational juror could fail to find unlawful possession of a trafficking quantity of fentanyl beyond a reasonable doubt. Any error by the district court in admitting the Berrum Lane statements was therefore harmless beyond a reasonable doubt, as discussed in detail below.

The record developed both at the police station and from the cell phone search, and presented at trial, supplies that proof through three independent strands: (1) the officers' firsthand observations of Palomares' conduct at Berrum Lane; (2) Palomares' own statements during the properly *Mirandized* RPD-station interview, which the district court declined to suppress and which would be admissible even if the Berrum Lane statements were not; and (3) the contents of Palomares' cell phone, recovered and searched under the valid warrant and published to the jury.

First, independent of anything Palomares said during the Berrum Lane encounter, the jury heard detailed eyewitness testimony about what the officers observed. Officer Thomas testified that as he approached on foot, he watched a man in a red shirt—identified in court as Palomares—throw a black object with both hands over a wooden fence onto the neighboring patio after he was able to spot the officers, which itself is evidence of Palomares's constructive knowledge of the backpack's illicit contents. Officer Thomas looked over the fence, saw a black backpack in the middle of the patio, obtained the residents' consent to enter, and retrieved the backpack from the spot where it had landed. Officer Brown corroborated the observation from a second body-worn-camera angle,

explaining that Palomares was acting unusually, would not answer questions, and kept looking at his phone—which was repeatedly lighting up during the contact—instead of responding. Both officers' body-worn-camera recordings were admitted and published to the jury.

The officers also observed Palomares' demeanor and physical responses, which do not depend on the substance of any unwarned answer. The moment Officer Thomas began looking inside the backpack after obtaining consent, Palomares began sighing, fidgeting, and moving around, yet minutes later he understood he was under arrest and promptly complied with the English command to separate his feet for a search of his person. Officer Thomas weighed the packages at approximately eight pounds, recorded his actions on his body-worn camera, and testified that the only other item in the backpack was a pair of surgical gloves. The forensic criminalist confirmed that the substance was fentanyl and that the analyzed net weight exceeded 400 grams, with testing halted only after the laboratory reached its highest quantification threshold. That quantity is multiples of the trafficking threshold and could not have been unobserved by anyone looking into the backpack. *Cf. Newson*, 139 Nev. at 94, 526 P.3d at 723 (concluding a confrontation error was harmless where the verdict was unattributable to the error in light of the record as a whole).

Second, the State independently supported its case through Palomares' own statements at the RPD station, which the district court admitted after correctly finding the Spanish-language *Miranda* advisement and waiver constitutionally adequate. Those statements—recorded on Officer Brown's body-worn camera, admitted as evidence, and published to the jury—are not subject to the Berrum Lane custody challenge and would survive even if everything said at the scene were suppressed. In the

interview at the RPD station, conducted with a telephonic Spanish interpreter and assisted in person by Officer Hernandez, Palomares gave at least three shifting accounts of how he came to have the backpack. Most significantly, he admitted facts establishing possession and knowledge: he acknowledged that he had been recorded throwing the bag and stated, "Yes, I threw the bag. I'm not going to deny that to you." He also admitted that he had been offered and took roughly $200 to dispose of the backpack, and he acknowledged that the bag contained "packages," retreating from a prior claim that it held only his girlfriend's clothing. Officer Hernandez, who spoke with Palomares in person, testified that Palomares communicated effectively in Spanish, understood him, and never indicated otherwise. Palomares' admissions satisfy the elements of knowledge and possession as to the trafficking offense and tie him to the trafficking-level quantity of fentanyl found in the backpack, further underscoring that any purported errors as to the Berrum Lane statements were harmless. *Cf. Medina v. State*, 122 Nev. 346, 355-56, 143 P.3d 471, 477 (2006) (holding error harmless beyond a reasonable doubt where the challenged evidence was cumulative, corroborated by other evidence, and did not add any material fact not otherwise presented to the jury).

Third, the cell-phone evidence is likewise independent and, in any event, cumulative of the proof above. Officers properly seized the phone incident to arrest after observing Palomares using it during the encounter, and Detective Jenkins later searched it under the valid warrant and presented the results at trial. The data extraction independently confirmed both ownership and contemporaneous use of the phone. As to ownership, the phone contained roughly 78,000 media files, including dozens to hundreds of self-portrait photographs of Palomares, a photograph of a check

written out to Palomares, and additional indicia-of-ownership printouts. As to use, the call and message logs showed the device attempting calls and receiving missed calls during the same timeframe in which officers saw it lighting up in Palomares' hand, corroborating their on-the-scene observations.

Detective Jenkins further testified that the phone used the end-to-end-encrypted WhatsApp application, whose message contents were not recoverable, and that the cell-phone contacts were saved under apparent nicknames rather than real names. Because the phone evidence corroborates ownership, active use, and the trafficking context without supplying the sole proof of any element, its admission could not have affected the verdict even if the warrant were assumed overbroad. Nevada authority confirms that comparable *Miranda* and search-related errors are harmless when the State presents overwhelming independent proof of guilt. *Cf. Medina*, 122 Nev. at 355-56, 143 P.3d at 477; *Acosta*, 573 P.3d at 1267 (holding that an overbroad phone search was harmless given the overwhelming evidence of the defendant's guilt); *Carroll*, 132 Nev. at 287, 371 P.3d at 1035 (concluding that other evidence rendered the *Miranda* violation harmless).

Having considered each of Palomares's contentions, we conclude that although the encounter at Berrum Lane eventually became custodial, the failure to then advise Palomares of his *Miranda* rights was harmless beyond a reasonable doubt. We further conclude that the public-safety exception authorized the initial safety-related questioning and that the Spanish-language *Miranda* advisement and waiver at the RPD station were constitutionally adequate. Additionally, the cell-phone affidavit and warrant satisfied the Fourth Amendment and, in any event, was obtained

and executed in good faith, and the jury verdict was supported by overwhelming evidence. Accordingly, we

ORDER the judgment of conviction AFFIRMED and REMAND for the limited purpose of correcting the clerical error in the judgment of conviction.[4]

Bulla, C.J

Gibbons, J.

Westbrook, J.

cc: Hon. David A. Hardy, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

[4]Insofar as Palomares has raised other arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.