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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE, Plaintiff and Respondent, v. CENTIA RENEE MARTIN, Defendant and Appellant.	B267500 (Los Angeles County Super. Ct. No. YA091874)

APPEAL from a judgment of the Superior Court of Los Angeles County, Scott T. Millington, Morris B. Jones, and Dudley Gray II, Judges. Affirmed.

Robert D. Bacon, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Shawn McGahey Webb and Noah P. Hill, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Following a trial at which Centia Renee Martin represented herself and did not testify, a jury convicted Martin of first degree murder and found true an allegation she personally used a firearm during the commission of the offense. Martin argues the trial court erred by initially denying her request under *Faretta v. California* (1975) 422 U.S. 806 to represent herself. Martin also contends the trial court violated her right to testify by denying her request to play a video recording of her post-arrest police interrogation in lieu of live direct testimony.

We conclude the trial court did not err in denying Martin's initial request to represent herself because her request was not unequivocal. We also conclude the trial court did not violate Martin's right to testify because the court properly excluded the video recording as inadmissible hearsay and Martin, despite receiving every opportunity to testify at trial, chose not to do so. Therefore, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Martin Meets a Client at a Building in Inglewood*

Robert Crigler was 74 years old and lived in Arizona with his long-time girlfriend, Madeleine Clark, but he spent two or three days a week in Inglewood, California at a building he managed. The building included an office and living quarters.

On Saturday, January 10, 2015, Crigler sent text messages and made telephone calls to Martin and requested her services as a topless maid, inviting her to come to his building in Inglewood

that afternoon. When Martin arrived, she parked her SUV in the building parking lot.

Crigler had plans the next day to meet a friend for brunch, but Crigler did not show up, call the friend, or answer his phone when his friend called him throughout the day. On Monday his office manager, Elida Fino, arrived at the building and saw both of Crigler's cars in the parking lot and his office door open. Fino noticed the lights were off and Crigler was not there, which Fino found "odd."

Meanwhile, Clark, who was concerned because she had not heard from Crigler since Saturday evening, called Fino. Upon hearing Fino had not seen Crigler, Clark asked Fino to check Crigler's living quarters. There was no answer when Fino knocked. Fino asked one of the maintenance workers to lift a ceiling tile in Crigler's office and look down into the adjacent living quarters. As the worker shined a flashlight into the darkened unit, which was uncharacteristically messy, Martin emerged from the bedroom and said, "Leave me alone. This is my apartment. I live here." Fino called the police.

When the police arrived, Martin came out of the living quarters, and the officers conducted a brief protective sweep to make sure no one else was present. Martin told the police she worked as a topless maid and met Crigler online. She said Crigler sometimes paid her for sex and gave her permission to stay in the unit. Martin produced the keys to the unit and showed the officers the text messages from Crigler on her phone. She said Crigler had left the night before and did not say where he was going. Based on the text messages and Martin's possession of keys to the unit, the police decided to leave and allowed Martin to stay.

The police returned the next morning to investigate Crigler's disappearance, but by then Martin had left. After a more extensive search of the living quarters, the police found what appeared to be blood stains on the sheets and on a towel inside a fold-out couch, along with a shotgun with a broken stock. They also noticed blood stains throughout the apartment, including on a kitchen knife and on a bottle of cleaning solution, and hair on the living room door frame. The officers eventually discovered Crigler's naked body, wrapped in a blood-stained blanket in a storage container in the back room of the unit. They found a board with a Home Depot label and pieces of wood from the broken shotgun on top of Crigler's body. The police also found an orange bucket, a hammer, a box of nails, four bags of cement mix, wooden shelves, and a plastic Home Depot shopping bag with a receipt inside.

Video surveillance footage revealed that, while Crigler's car had remained in the building parking lot since he arrived Saturday afternoon, Martin's SUV left on Sunday and returned approximately five hours later, at which point she removed some items from her SUV, including what appeared to be an orange Home Depot bucket. A store security system from a nearby Home Depot store confirmed Martin had purchased a bucket, nails, laminate wood boards, cement mix, and a hammer that day.

An autopsy revealed Crigler had numerous deep lacerations to his face and head consistent with having been beaten with a shotgun, and he had a wide, gaping cut across his neck. A fingerprint analysis determined Martin's fingerprints matched bloody fingerprints left on the shotgun. Aside from the

DNA of Martin and Crigler, the police found no evidence of anyone else's DNA in the living quarters.

B. *The Trial Court Denies Martin's Initial Request To Represent Herself But Grants the Request at the Next Hearing*

On February 10, 2015 the court held a pretrial hearing at which Martin was represented by a deputy public defender. Over Martin's objection, the deputy public defender asked the court to continue the matter because he had not received certain discovery from the prosecutor. Following a discussion among the court, the prosecutor, and the public defender about the outstanding discovery, the court addressed Martin directly.

"The Court: Did you understand what was just said, Miss Martin?

"Martin: I do understand what was just said, but I do not agree with my attorney. All I want to know is do they have a search warrant for searching my apartment.

"The Court: Well, that part of it is not before me as far as the search warrant is concerned. However, you have the right to have an effective representation in this case and this is guaranteed by federal law.

"Martin: Yes, sir.

"The Court: The court is going to continue this matter over your objection.

"Martin: I have a question. Can I fire my attorney? I do want to fire my attorney right now.

"The Court: No, ma'am. You have a right to hire an attorney if you so desire.

"Martin: I will represent myself.

"The Court: It's strictly up to you.

"Martin: I would like to represent myself.

"The Court: I will not take this up at this juncture.

"Martin: I would like to represent myself.

"The Court: The matter is continued."

The court stated it was continuing the matter to March 5, 2015, at which point Martin asked the following:

"Martin: How can I get a new lawyer? How can I represent myself?

"The Court: Just a moment. You can get a list of attorneys—

"Martin: I want to represent myself.

"The Court: Well, that's up to you.

"Martin: Yes. So how do I go about that?

"The Court: We'll take that up on March the 5th. Thank you."

Nevertheless, the court recalled the case that afternoon, noting Martin had indicated in the morning she wanted to represent herself. The court confirmed that was "what [she] would like to do" and gave her "some papers" to fill out "related to [her] qualifications . . . and [her] ability to represent [herself] in this matter." After reviewing those papers, presumably a waiver form, the court stated, "It appears that you understand the legal ramifications of representing yourself. However, the court is not satisfied at this juncture that you are qualified to represent yourself simply because of the amount of discovery that's still outstanding. Counsel cannot turn over what he does not have. The court will deny your motion for pro per status at this juncture. That is without prejudice which means you can raise that issue at the next court hearing. The motion is denied at this

juncture." Martin responded, "So can I get an explanation by anybody like what happened? Why would you deny it?" The court replied, "I just explained to you why I denied it."

The next hearing was approximately three weeks later, on March 5, 2015. A different judge presided, and Martin was represented by a different public defender. The court and counsel again discussed the discovery issue and Martin's court-appointed attorney, against Martin's wishes, agreed to waive Martin's right to a speedy trial for purposes of a continuance. The deputy public defender told the court, "We're at a bit of an impasse, and I'm asking the court to consider the work that needs to be done on this very serious case, and I've asked Miss Martin to reconsider waiving time because I do believe it's in her best interest."

Following additional discussion about the status of the discovery, Martin's court-appointed counsel raised the issue of self-representation: "Your Honor, outstanding also at the last hearing, I'd like to ask the court to perhaps inquire of Miss Martin because I'm not sure what her position is today, is her request of *Faretta* waiver and request to go pro per in this case. So I want the record to be clear what her position is with regards to that before making a decision. I don't believe that Miss Martin wants to go pro per, but I may be wrong." At which point Martin interjected, "I will. I will go pro per. Yes, I would like to go pro per in this matter." The court confirmed Martin's desire to waive her right to counsel, engaged in a colloquy advising her against doing so, and, after "really trying to talk [her] out of this," the court granted her request to represent herself, noting she had "a constitutional right to make this horrible mistake." Martin thereafter represented herself, including at the preliminary hearing several months later and throughout trial.

C. *Martin Does Not Testify at Trial*

Near the end of the prosecution's case, the court advised Martin it was her decision "whether or not to testify in this matter" and explained the instruction the court would give if Martin decided not to testify. Later, at a sidebar conference, the court asked Martin if she was going to testify, and Martin responded, "No, I'm ready to get this over with." After Martin concluded questioning her only witness, a character witness, she told the court, "I have no other witnesses. Defense rests."

Outside the presence of the jury, the following exchange occurred:

"The Court: Again, I want to advise you, Ms. Martin, you have the absolute constitutional right not to testify. You also have the absolute constitutional right to testify in this matter. I told you what I would read to the jury should you choose not to testify. Are you telling me you do not want to testify?

"Martin: Because I've been my own lawyer throughout the situation, I would rather my interrogation video from January 20th, which would be after the incident before I had a chance to view all this case stuff, do all this work on the trial, to be entered as my testimony. I will even allow [the prosecutor] to ask me questions based on that as his [cross-examination].

"The Court: How do you get in your statements to the detectives? As I indicated, under Evidence Code section 1220 an admission is allowed as a hearsay exception by a party opponent. How do you get it in? Tell me the exception you're offering for the truth of the matter asserted."

Martin did not provide an exception but rather stated it would not be fair to the jury or the prosecutor for her testify at trial "because I've been on this case for eight months as the

lawyer" and "I know it inside out." The trial court ruled the video was "not coming in unless you have an exception to the hearsay rule. I haven't heard it." The trial court again asked Martin, "Do you want to testify in this matter, yes or no?" Martin said, "No."

D. *Martin Is Convicted and Sentenced*

The jury found Martin guilty of first degree murder and found the firearm enhancement true. The trial court sentenced Martin to a prison term of 25 years to life, plus 10 years for the enhancement. Martin timely appealed.

DISCUSSION

A. *The Trial Court Did Not Violate Martin's Right To Represent Herself Because Her Initial Request Was Not Unequivocal*

In *Faretta v. California*, *supra*, 422 U.S. 806 the United States Supreme Court held that under the Sixth Amendment a criminal defendant "has a constitutional right to proceed without counsel when he voluntarily and intelligently elects to do so." (*Id.* at p. 807; see *id.* at pp. 819-821 ["[t]he right to defend is given directly to the accused; for it is he who suffers the consequences if the defense fails"].) At the same time, the defendant also has a constitutional right to representation by counsel at all critical stages of a criminal proceeding. (*People v. Koontz* (2002) 27 Cal.4th 1041, 1069; see *ibid.* [a criminal defendant's right to representation by counsel and right to represent himself or herself are "mutually exclusive"]; *People v. James* (2011) 202 Cal.App.4th 323, 328.) The right to representation by counsel "is self-executing; the defendant need make no request for counsel in

order to be entitled to legal representation. [Citation.] The right to counsel persists unless the defendant affirmatively waives that right." (*Koontz*, at p. 1069.) Thus, "the federal Constitution requires assiduous protection of the right to counsel," and "courts must draw every inference against supposing that the defendant wishes to waive the right to counsel." (*People v. Marshall* (1997) 15 Cal.4th 1, 20, 23, citing *Brewer v. Williams* (1977) 430 U.S. 387, 404.) The United States Supreme Court, however, "has not extended the same kind of protection to the right of self-representation." (*Marshall*, *supra*, at p. 20.)

The right to self-representation has limits. (See *Indiana v. Edwards* (2008) 554 U.S. 164, 171 ["*Faretta* itself and later cases have made clear that the right of self-representation is not absolute"]; *People v. Mickel* (2016) 2 Cal.5th 181, 206 ["[t]he autonomy and dignity interests underlying our willingness to recognize the right of self-representation may be outweighed, on occasion, by countervailing considerations of justice and the state's interest in efficiency"]; *People v. Butler* (2009) 47 Cal.4th 814, 825 ["[t]here are limits on the right to act as one's own attorney"].) Relevant here, a "court may deny a request for self-representation that is equivocal [or] made in passing anger or frustration." (*Butler*, at p. 824; see *People v. Watts* (2009) 173 Cal.App.4th 621, 629 [a request for self-representation "must be unequivocal *and* must not be an ill-considered decision that is a function of annoyance or frustration"]; see also *U.S. v. Mendez-Sanchez* (9th Cir. 2009) 563 F.3d 935, 945-946 ["[b]ecause the exercise of self-representation cuts off the exercise of the right to counsel, often to individual detriment, we recognize the right only when it is asserted without equivocation. . . . '[I]f [the defendant] equivocates, he is presumed to have requested the assistance of

counsel'"].) Courts require the defendant to make an unequivocal request for self-representation '"'in order to protect the courts against clever defendants who attempt to build reversible error into the record by making an equivocal request for self-representation.'"' (*People v. Weeks* (2008) 165 Cal.App.4th 882, 886, quoting *People v. Roldan* (2005) 35 Cal.4th 646, 683, disapproved on another ground in *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22.)

To determine whether a defendant's request for self-representation is unequivocal, the court "should evaluate not only whether the defendant has stated the motion clearly, but also the defendant's conduct and other words. Because the court should draw every reasonable inference against waiver of the right to counsel, the defendant's conduct or words reflecting ambivalence about self-representation may support the court's decision to deny the defendant's motion." (*Marshall*, *supra*, 15 Cal.4th at p. 23; see *People v. Ruffin* (2017) 12 Cal.App.5th 536, 545.) Indeed, "the *Faretta* right is forfeited unless the defendant '"articulately and unmistakably"' demands to proceed in propria persona." (*People v. Valdez* (2004) 32 Cal.4th 73, 99; accord, *People v. Boyce* (2014) 59 Cal.4th 672, 703.) "[A]n insincere request or one made under the cloud of emotion may be denied." (*Marshall*, *supra*, at p. 21; see *People v. Stanley* (2006) 39 Cal.4th 913, 932 ['"a [*Faretta*] motion made out of a temporary whim, or out of annoyance or frustration, is not unequivocal—even if the defendant has said he or she seeks self-representation"'].) As such, "courts have concluded that under some circumstances, remarks facially resembling requests for self-representation were equivocal, insincere, or the transitory product of emotion." (*People v. Tena* (2007) 156 Cal.App.4th 598, 607.)

Specifically, courts may properly deny a request for self-representation as equivocal when made as an "impulsive response" or an "equivocal, emotional reaction" to the denial of a motion under *People v. Marsden* (1970) 2 Cal.3d 118 to replace appointed counsel. (*People v. Barnett* (1998) 17 Cal.4th 1044, 1087; see *People v. Valdez*, *supra*, 32 Cal.4th at p. 99 [single reference to right of self-representation made immediately following denial of *Marsden* motion indicated the defendant did not make an unequivocal motion for self-representation]; *People v. Scott* (2001) 91 Cal.App.4th 1197, 1205 [request for self-representation was equivocal when made immediately after the court denied the defendant's *Marsden* motion and the defendant's comments suggested he asked to represent himself "only because he wanted to rid himself of appointed counsel"]; see also *People v. Stanley*, *supra*, 39 Cal.4th at pp. 932-933 [request "for self-representation during a renewed *Marsden* motion . . . out of apparent annoyance or frustration with his first appointed counsel" was evidence the defendant's waiver of counsel was not knowing and intelligent].) For example, the California Supreme Court in *Marshall* held the defendant's request to represent himself was equivocal because he was displeased with his appointed counsel over an order to give blood and tissue samples and the defendant made the request to avoid giving the samples. (See *Marshall*, *supra*, 15 Cal.4th at p. 25.) Similarly, the court in *Tena* concluded the defendant's requests for self-representation were "impulsive reactions to his frustrated attempts to secure an attorney who would subpoena the witnesses that he desired, rather than unequivocal *Faretta* requests." (*Tena*, *supra*, 156 Cal.App.4th at p. 608; see *People v. Danks* (2004) 32 Cal.4th 269, 296 ["defendant's references to self-representation were

equivocal, born primarily of frustration regarding the granting of counsel's requests for continuances and his desire to avoid further psychiatric examination"].)

Reviewing the entire transcript and considering Martin's statements in context, we conclude Martin's initial request for self-representation was not unequivocal.[1] Rather, the record supports the conclusion that Martin's request arose from her frustration and disagreement with her appointed counsel's request for a continuance, exacerbated by Martin's preoccupation with whether the police had obtained a warrant for the search of her apartment.[2] Notably, immediately after the trial court stated

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[1] "'In determining on appeal whether the defendant invoked the right to self-representation, we examine the entire record de novo.'" (*People v. Stanley*, *supra*, 39 Cal.4th at p. 932, quoting *People v. Dent* (2003) 30 Cal.4th 213, 217-218; see *People v. Mickel*, *supra*, 2 Cal.5th at p. 205 ["[w]e review a *Faretta* waiver de novo, and examine the entire record to determine the validity of a defendant's waiver of the right to counsel."). Even if the trial court's stated reason for denying Martin's request to represent herself— the amount of discovery still outstanding—was arguably improper, we may still affirm the court's ruling if the record shows the court properly denied the request on other grounds. (*People v. Dent*, *supra*, 30 Cal.4th at p. 218.)

[2] Not only had Martin indicated "all [she] want[ed] to know" at the February 10, 2015 hearing was whether the police had obtained a warrant for the search of her apartment, at the next hearing, when the court granted her request to represent herself, Martin agreed to a 30-day continuance so she could learn "what's going on, the evidence against me, why they're saying I did something. What—everything they have. What search warrants they have, what search warrants they don't have."

it was going to continue the matter over her objection, Martin asked if she could "fire" her attorney and stated she wanted to "fire [her] attorney right now." When the court said she could not do that, Martin stated, "I will represent myself." Immediately after that, Martin asked, "How can I get a new lawyer? How can I represent myself?" Thus, Martin vacillated in rapid succession between wanting to fire her appointed counsel, represent herself, and secure "a new lawyer." Such impulsive responses to the court's ruling, and her appointed counsel's role in securing that ruling, show that her request for self-representation was not unequivocal.

Nor does it matter, as Martin asserts in her reply brief, that the trial court "did not think her request was equivocal, and gave no indication of ever considering that it could be denied for that reason." The California Supreme Court rejected that argument in *Marshall*, concluding the defendant's apparent request for self-representation "was ambivalent in the context of that hearing," notwithstanding that the trial court had described the request as one for self-representation and made no express finding the request was equivocal. (*Marshall*, *supra*, 15 Cal.4th at p. 25; see *Tena*, *supra*, 156 Cal.App.4th at p. 607 ["[i]n assessing [the defendant's] remarks, we are not bound by [the trial court's] responses, and [its] failure to make express findings on this matter does not oblige us to conclude that [the defendant's] *Faretta* rights were infringed"].)

B. *The Trial Court Did Not Deny Martin Her Right To Testify*

Martin contends the trial court's exclusion of the videotape of her police interrogation "impermissibly diminished" her

constitutional right to testify at trial in her defense. Martin argues the ruling was an abuse of discretion and requires reversal.

A criminal defendant has constitutional rights to testify on his or her behalf and present witnesses and evidence in support of a defense. (*People v. Mickel*, *supra*, 2 Cal.5th at p. 218.) These rights, however, "are 'subject to reasonable restrictions.'" (*Ibid*.) Thus, the right to testify "'may, in appropriate cases, bow to accommodate other legitimate interests in the criminal trial process,'" and "[i]n applying its evidentiary rules a State must evaluate whether the interests served by a rule justify the limitation imposed on the defendant's constitutional right to testify." (*Rock v. Arkansas* (1987) 483 U.S. 44, 55-56; accord, *People v. Mickel*, at pp. 218-219; see *U.S. v. Gallagher* (9th Cir. 1996) 99 F.3d 329, 332 ["the right of a defendant to take the stand in his own defense and present relevant testimony . . . is not . . . without limitation"].)

In particular, a criminal defendant "must comply with established rules of procedure and evidence designed to assure both fairness and reliability in the ascertainment of guilt and innocence." (*Chambers v. Mississippi* (1973) 410 U.S. 284, 302.) "'As a general matter, the ordinary rules of evidence do not impermissibly infringe on the accused's right to present a defense.'" (*People v. Mickel*, *supra*, 2 Cal.5th at p. 218; see *Taylor v. Illinois* (1988) 484 U.S. 400, 410 ["[t]he accused does not have an unfettered right to offer testimony that is . . . otherwise inadmissible under standard rules of evidence"]; accord, *People v. Noori* (2006) 136 Cal.App.4th 964, 978.) "[T]he routine application of provisions of the state Evidence Code law does not implicate a criminal defendant's constitutional rights. [Citation.]

Instead, because the trial court merely excluded some evidence . . . and did not preclude defendant from presenting a defense, any error would be one of state evidentiary law only." (*People v. Jones* (2013) 57 Cal.4th 899, 957.) We review a trial court's ruling on the admissibility of evidence, including questions of hearsay, for abuse of discretion. (*People v. Waidla* (2000) 22 Cal.4th 690, 725; see *People v. Jones*, at p. 956 ["a trial court's decision to admit or exclude a hearsay statement . . . will not be disturbed on appeal absent a showing of abuse of discretion"].)

Martin does not challenge the court's ruling the videotape was hearsay, nor does she offer any potentially applicable hearsay exception. Instead, Martin argues that the trial court erred in "taking the hearsay rule too literally" and that the court's refusal to allow her to play the interrogation tape (then allow the prosecution to cross-examine her) in lieu of testifying on direct examination violated her constitutional right to testify. Martin offers no support for the proposition that a defendant's right to testify includes the right to play a recording of a police interrogation. She argues only, without citation to authority, that "of all the competing principles implicated by [Martin's] request, the overriding one is her constitutional right to testify."

Although not mentioned by the parties, the California Supreme Court has provided guidance on this issue, and it supports the trial court's ruling. For example, in *People v. Williams* (2006) 40 Cal.4th 287 the defendant argued the trial court's exclusion of a tape recording of his post-arrest police interrogation violated his constitutional rights to due process, a fair sentencing hearing, and a reliable penalty phase determination. (*Id.* at p. 317). The Supreme Court disagreed,

concluding the trial court did not abuse its discretion in excluding the tape as inadmissible hearsay. (*Id.* at pp. 318-319.)[3] In *People v. Jurado* (2006) 38 Cal.4th 72 the Supreme Court held the trial court did not violate the defendant's constitutional rights by excluding as hearsay the defendant's videotaped police interview. The Supreme Court stated, "[T]he circumstance that defendant made his statements during a postarrest police interrogation, when he had a compelling motive to minimize his culpability for the murder and to play on the sympathies of his interrogators, indicated a lack of trustworthiness." (*Jurado*, at pp. 128-130; see *People v. Kaurish* (1990) 52 Cal.3d 648, 704-705 [trial court properly excluded hearsay tape recording of the defendant's police interrogation made shortly after arrest]; see also *People v. Livaditis* (1992) 2 Cal.4th 759, 780 ["a state is generally not required to admit evidence in a form inadmissible under state law," and the "same lack of reliability that makes the statements excludable under state law makes them excludable under the federal Constitution"].)

Martin could have taken the stand and told the jury her version of the events. (See *People v. Gurule* (2002) 28 Cal.4th 557, 605 ["[d]efendant was free to present . . . information" that would otherwise be inadmissible hearsay "by taking the stand

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[3] Martin's offer to submit to cross-examination did not cure the hearsay problem. The defendant in *Williams* testified at trial, and the court still properly excluded the tape recording. (*Williams*, *supra*, at 40 Cal.4th at pp. 297-299; see *People v. Anderson* (2012) 208 Cal.App.4th 851, 877-878 [citing *Williams* and rejecting the argument that the hearsay rule did not apply because the defendant testified at trial and subjected himself to cross-examination].)

himself"].) The trial court gave Martin every opportunity to testify and tell the jury the same (or different) things she told the police in her interview, so the jury could evaluate her testimony live and under oath.[4] Martin chose not to do so. The trial court did not abuse its discretion or violate Martin's constitutional rights in excluding the videotape as hearsay.

DISPOSITION

The judgment is affirmed.

SEGAL, J.

We concur:

PERLUSS, P. J. ZELON, J.

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[4] On appeal Martin suggests for the first time "[i]t would have been proper to require her to affirm orally in open court the content of her recorded statements after taking the witness oath and before the video was played and before she submitted to cross-examination." Because Martin did not raise this possibility in the trial court, however, she has forfeited the argument. (See *People v. Blacksher* (2011) 52 Cal.4th 769, 821.) In any event, the procedure Martin proposes would not have changed the fact that her post-arrest statements were out-of-court statements, nor would it have cured the hearsay problems that playing the out-of-court statements by Martin and the interviewing officer would have raised.