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Court of Appeal, First District, Division 4, California.

The PEOPLE, Plaintiff and Respondent,

v.

Terrance Leo BOLTON, Defendant and Appellant.

No. A117037.

(Contra Costa County Super. Ct. No. 050416024).

Sept. 4, 2008.

Office of the Attorney General, San Francisco, CA, for Plaintiff and Respondent.

First District Appellate Project, John Francis McCabe II., San Francisco, CA, for Defendant and Appellant.

RUVOLO, P.J.

I. INTRODUCTION

*1 Appellant Terrance Leo Bolton (Bolton) appeals from his conviction of first degree murder. He argues that the trial court erred in failing to properly instruct the jury, and maintains that his admissions to police were involuntary and made without waiving his Miranda^{FN1} rights. He also claims that the errors cumulatively denied him his constitutional rights to due process. We affirm.

FN1. *Miranda v. Arizona* (1966) 384 U.S. 436, 478-479 (*Miranda*).

II. PROCEDURAL BACKGROUND

The Contra Costa County District Attorney charged Bolton by information with one count of first degree murder (Pen.^{FN2} Code, § 187), and included the enhancing allegation that Bolton used a deadly and dangerous weapon in the commission of the crime (§ 12022, subd. (b)(1)). A jury found Bolton guilty of first degree murder, and found true the enhancing allegation. The court sentenced Bolton to 25-years-to-life imprisonment for the first degree murder, and one year for the enhancing allegation, to be served consecutively. This timely appeal followed.

FN2. Unless otherwise specified, all further statutory references are to the Penal Code.

III. FACTUAL BACKGROUND

On February 24, 2004, FN3 Michelle Barfield, Bolton's wife, died in a park in Richmond after being stabbed 27 times. She and Bolton had been separated since November 2003. They had an infant son who was born in July 2002.

FN3. All further undesignated dates are in 2004.

At the time of the incident, Bolton was living in Berkeley with his mother, brothers, and 17-year-old sister J.J. testified FN4 Bolton told her in October 2003 that he wanted to kill Michelle. Bolton repeated this sentiment to her on February 24th during a walk near their home, though he did not use the word "kill." He told J. he wanted to end his relationship with Michelle, and said he would "[e]ither stab [her] or have somebody else do it ... [b]y gun." J. did not believe him, and did not take him seriously on either occasion. During the February 24th walk, he asked J. to come with him to pick up the baby from Michelle, and J. agreed to.

FN4. J. made a statement to police and testified as part of an agreement with the prosecution, after she was charged with first degree murder. Under this agreement, she would remain under the jurisdiction of the juvenile court, "[m]eaning at worst [t she] would be incarcerated in a juvenile facility up to the age of 25 maximum...."

Bolton and J. returned to their home, where J. went upstairs. When she came downstairs, she heard a kitchen cabinet slam and then saw Bolton heading toward the front door. She saw Bolton putting something in his jacket pocket that looked like gloves. Their stepfather kept latex gloves in the kitchen.

J. and Bolton left their home in Berkeley together. Bolton was wearing a black puffy coat with a "Fat Albert" logo on the back. They took public transit to Richmond, where Bolton was going to pick up his son from Michelle. Bolton had called Michelle earlier, and arranged to pick up the baby in a park close to her home. They had been exchanging custody of the baby on an informal basis since their separation, but had never done so at a park.

When Bolton and J. were near the Barfield home, Bolton called Michelle to see if she was ready. He told Michelle he had a surprise for her, and that J. would pick her up at her house because she needed to use the restroom. J. went alone to the Barfield home, arriving at about 8:00 p.m. She was a friend of Michelle's, and often visited her. Michelle's brother Christopher Barfield (Christopher) FN5 was at home that evening, and heard J. "rushing [Michelle] out of the house," telling her " 'hurry up because my brother is around the corner waiting.' " Michelle left with J. at about 8:15 p.m., carrying her infant son and two diaper bags.

FN5. Because a number of individuals referenced in this opinion share the same last name, we refer to them by their first names, where appropriate, for clarity. (See *Rubenstein v. Rubenstein* (2000) 81 Cal.App.4th 1131, 1136, fn. 1.)

*2 Approximately 20 minutes later, Christopher answered the telephone at the Barfield home. He recognized Bolton's voice, who told him that "some dudes hopped out of a van and jumped [Michelle]" and J. at the park, and Michelle was knocked out. Bolton agreed to meet him at the park. Christopher expressed his surprise that Bolton did not protect Michelle, telling him " 'Somebody jumped your girl at the park ... [y]ou aren't going to protect her?' ... 'Man[,] tell my momma what you just told me.' " Christopher handed the phone to his mother, who spoke with Bolton. Barfield family members immediately got in their van and drove to the park, which was around the corner from their home.

They arrived at the park in seconds, but it took about five minutes of searching to find Michelle. Christopher was the first to find her, lying on her chest in the sandbox. He rolled her over to see if she was alive, but she "had no life." He found the two diaper bags and Michelle's hair extensions, bandana and glasses nearby. His mother called police on her cell phone.

J. testified that when she and Michelle arrived at the park, Bolton was there and took the baby from Michelle. He then handed the baby to J., and she started to walk toward the home of her grandmother, Billie Feathers, where Bolton had asked her to take him. Michelle told her she should not walk there alone at night with the baby, so J. waited with him on a bench.

Bolton and Michelle talked for about 10 minutes, though J. could not hear what they were saying. They did not appear to be angry. The conversation ended, and they walked towards J. Michelle hugged the baby, J. and Bolton. J. left in the direction of Feathers's house, and Bolton said he would catch up with her.

J. turned around, and saw Bolton grab Michelle's hand. As she was walking away with the baby, she heard Michelle "ask [Bolton] what was wrong with him." She turned around again, and saw Bolton "pull Michelle towards him" by the hand. Michelle continued to ask him what he was doing in a "scared" tone. J. saw Bolton "stumble towards" Michelle, and she turned around because she "didn't know what else to do at that point," and was a "little scared and shocked." When she turned back around to face them, "[i]t just looked as if [Bolton] was punching her." She heard Michelle say "Terrance, stop." J. stood there with the baby in her arms. She then heard Michelle say "[J.], help." J. "froze up" and saw Michelle on the ground, extending her hand toward her. J. did not try to help her. She walked toward Feathers's house with the baby, and saw Bolton about 50 feet ahead of her.

Bolton arrived first at Feathers's home. Melinda Bailey, Feathers's daughter, answered the door, and observed Bolton dabbing one of his hands with a tissue. She asked him what was wrong, and Bolton told her he had fallen on some glass and cut himself. Bolton then went into the bathroom. J. and the baby arrived at Feathers's home 10 or 15 minutes later. After she sat down on the couch with the baby, Bolton came out of the bathroom. He was holding his jacket and had some tissue wrapped around his finger. Neither Bolton nor J. told anyone at the house about what just happened.

*3 Bailey had given Bolton and J. a ride the previous night, and she did not want to again. She asked her daughter to bring out a bus schedule for them. Bolton left the house after about 15 minutes, tossing a tissue into the trash can in the living room. J. followed a few minutes later with the baby.

J. and Bolton walked together to the home of Eddie Dorsey, their mother's cousin. Along the way, Bolton told J. to say Michelle had been attacked by strangers while she and J. were walking to the park. Bolton also told her that "a gun would [have] be[en] faster" than the knife, because the stabbing was "difficult." When they arrived at Dorsey's home, Bolton asked him for medicine for his hand, and then went to the bathroom for a tissue. Bolton called home, and while holding the phone told J. that Michelle's mother had called their mother and said Michelle was dead. Their mother told them to stay at Dorsey's house until Bailey picked them up.

Bailey arrived a few minutes later and then drove Bolton, J. and the baby to the Bolton home in Berkeley to pick up Bolton's mother, Valerie Cook. Bolton went into the house. When he came back, he no longer had the "Fat Albert" jacket. They drove to the Richmond police station, arriving there at about 10:15 p.m.

Detectives Peixoto and Medina interviewed Bolton at the police station, beginning at about 3:00 a.m. The detectives noted the cuts on his right hand. Bolton told them he received one of them when he cut his finger on a knife while doing dishes earlier that evening, and stated he was right-handed. He told the detectives that he was going to meet Michelle in the park that evening to pick up his son. He "went to the store, and she called me up and said she was on her way. I was on my way to the store and I seen my sister J [...] running.... She said somebody was doing something to my wife Michelle, you know. It's just crazy, man. And so I ran to my granny['s] house to get a ride."

The detectives told him J. was also being interviewed, and asked him if she would tell them the same story. After leaving the room and returning, the detectives told Bolton that J. had implicated him. Bolton ultimately admitted that he killed Michelle, stabbing her seven times. He said she had been "playing with [his] heart," had a new job, a new boyfriend, and had told the baby he had "a new daddy." Bolton said he had brought a knife and gloves with him that night, and told them where he disposed of them.

Officer Mandell found the gloves and knife where Bolton had indicated. The gloves were "a white pair of standard medical gloves" with a knife wrapped inside. The gloves had blood on them, with a DNA profile matching that of Michelle. One of the gloves had perforations on the index finger, the area of the thumb joint, and on either the palm or back of the glove, depending on the configuration. Police also recovered the "Fat Albert" jacket from Bolton's home. Police criminalists took and tested swabs from areas of apparent blood on the jacket. The DNA profile showed that Michelle was the major contributor of the blood on three of the samples from the jacket. One of the samples from the jacket had a DNA profile consistent with Bolton's.

IV. DISCUSSION

A. Accomplice Jury Instruction

*4 Bolton argues that the court erred in instructing the jury that he bore the burden of proving that J. was an accomplice (CALJIC No. 3.19), rather than instructing she was an accomplice as a matter of law (CALJIC No. 3.16). He urges that “[t]here was very little if any corroboration of J.’s testimony, particularly regarding premeditation and deliberation,” rendering the claimed error prejudicial because “[t]he jury may well have found that J[.] was not an accomplice and, therefore, they were entitled to convict [him] of first degree murder on her testimony alone.”

“A conviction cannot be had upon the testimony of an accomplice unless it be corroborated by such other evidence as shall tend to connect the defendant with the commission of the offense; and the corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof. [¶] An accomplice is hereby defined as one who is liable to prosecution for the identical offense charged against the defendant on trial in the cause in which the testimony of the accomplice is given.” (§ 1111.) Corroborating evidence that satisfies section 1111 “must tend to implicate the defendant by relating to an act that is an element of the crime. The corroborating evidence need not by itself establish every element of the crime, but it must, without aid from the accomplice’s testimony, tend to connect the defendant with the crime. [Citation.]” (*People v. McDermott* (2002) 28 Cal.4th 946, 986; *In re Christopher B.* (2007) 156 Cal.App.4th 1557, 1560-1561.) “Corroborating evidence is sufficient if it tends to implicate the defendant and thus relates to some act or fact that is an element of the crime... ‘ [T]he corroborative evidence may be slight and entitled to little consideration when standing alone.” [Citations.] [Citation.]” (*People v. Avila* (2006) 38 Cal.4th 491, 562.) A trial court’s failure to instruct on accomplice liability under section 1111 is harmless if there is “sufficient corroborating evidence in the record. [Citation.]” (*People v. Lewis* (2001) 26 Cal.4th 334, 370.)

Here, the trial court instructed the jury that “[y]ou cannot find a defendant guilty based upon the testimony of an accomplice unless that testimony is corroborated by other evidence which tends to connect that defendant with the commission of the offense.” (CALJIC No. 3.11.) The court also instructed the jury that “You must determine whether the witness [J.] was an accomplice as I have defined that term. [¶] The defendant has the burden of proving by a preponderance of the evidence that J[.] was an accomplice in the crime charged against the defendant.” (CALJIC No. 3.19.) The court further instructed the jury with CALJIC No. 3.12 regarding the sufficiency of the evidence needed to corroborate an accomplice, and CALJIC No.

3.18, regarding the care and caution necessary in examining the testimony of an accomplice.

Bolton contends the jury might have found that J. was not an accomplice and, therefore, convicted him of first degree murder based solely on J.'s testimony. “[F]ailure to instruct on accomplice liability under section 1111 is harmless if there was adequate corroboration of the witness.” (*People v. Brown* (2003) 31 Cal.4th 518, 557.) While the trial court did not instruct the jury that J. was an accomplice as a matter of law, the prosecutor told the jury she was in his closing argument. Rather than arguing that J. was not an accomplice and therefore no corroboration of her testimony was needed, he explained to the jury that “you need to have corroboration before you can consider J[.]’s testimony.”

*5 Additionally, as argued by the prosecutor, there was extensive evidence corroborating J.'s testimony. Notably, Bolton confessed to the murder and told police where he disposed of the knife and gloves, which had Michelle's blood on them. “ ‘Admissions or confessions of an accused may constitute a sufficient corroboration of the accomplice's testimony to warrant conviction.’...” (*People v. Newman* (1954) 127 Cal.App.2d 430, 435, citing 22 C.J.S. 1403.) There was other corroboration as well. Michelle's brother Christopher testified that Michelle went to the park the evening of February 24th to meet Bolton and exchange custody of their child. Bolton called Michelle's home after the killing and told Christopher that some “dudes” had “jumped” Michelle and he had left her “knocked out” in the park, placing him in the park at the time of the killing. Police found Michelle's blood on the “Fat Albert” jacket J. testified that Bolton wore the night Michelle was killed, and on the knife police found after Bolton directed them to its location. Given the slight amount of corroboration necessary and the extensive amount in the record, any error in failing to instruct that J. was an accomplice as a matter of law was harmless.

B. Lying-in-Wait Jury Instruction

Bolton asserts that the court erred in instructing the jury on lying in wait as a basis for finding first degree murder, claiming the instruction was not supported by the evidence. He argues there was no evidence of a “surprise attack from a position of advantage any more than there would be in any homicide in which one person kills the other after talking to him or her for several minutes.” We review the record to determine whether there was substantial evidence of lying in wait, and, accordingly,

whether the trial court properly instructed the jury. (*People v. Ceja* (1993) 4 Cal.4th 1134, 1139, fn. 1.)

Murder which is perpetrated by means of lying in wait is first degree murder. (§ 189; *People v. Ceja*, supra, 4 Cal.4th at p. 1139.) The elements of “lying in wait” are “(1) a concealment of purpose, (2) a substantial period of watching and waiting for an opportune time to act, and (3) immediately thereafter, a surprise attack on an unsuspecting victim from a position of advantage” (the Morales factors). (*People v. Morales*FN6 (1989) 48 Cal.3d 527, 557 (Morales); § 190.2, subd. (a)(15).) “The concealment which is required, is that which puts the defendant in a position of advantage, from which the factfinder can infer that lying-in-wait was part of the defendant’s plan to take the victim by surprise. [Citation.] It is sufficient that a defendant’s true intent and purpose were concealed by his actions or conduct. It is not required that he be literally concealed from view before he attacks the victim.” (*Morales*, supra, 48 Cal.3d at pp. 554-555.) The critical component of lying in wait is “the waiting of a defendant for the opportunity to take the victim by surprise by concealing his murderous purpose in order to gain the advantage of ambush or surprise.” (*People v. Superior Court (Jurado)* (1992) 4 Cal.App.4th 1217, 1227.) “[T]he Morales factors, including the requirement of a ‘substantial period’ of watching and waiting, are a part of the factual matrix required both for first degree murder under a lying-in-wait theory, and for the lying-in-wait special circumstance.” FN7 (*Poindexter*, supra, 144 Cal.App.4th at pp. 584-585, fn. omitted.)

FN6. “Although [CALJIC No. 8.25] does not verbatim track our language in [*Morales*], ... we have repeatedly upheld the instruction, and continue to do so. [Citations.]” (*People v. Ceja*, supra, 4 Cal.4th at p. 1139, see also *People v. Poindexter* (2006) 144 Cal.App.4th 572, 581 (*Poindexter*).

FN7. The difference between the lying-in-wait special circumstance and lying-in-wait first degree murder is that in the special circumstance, the murder must be intentional, while to establish lying-in-wait first degree murder, it need not be. (§ 190.2, subd. (a)(15); see also *People v. Superior Court (Bradway)* (2003) 105 Cal.App.4th 297, 306-307.)

*6 The court instructed the jury on lying in wait with CALJIC No. 8.25 as follows:
“Murder which is immediately preceded by lying in wait is murder of the first

degree. [¶] The term 'lying in wait' is defined as a waiting and watching for an opportune time to act, together with a concealment by ambush or by some other secret design to take the other person by surprise, even though the victim is aware of the murderer's presence. The lying in wait need not continue for any particular period of time, provided its duration is such as to show a state of mind equivalent to premeditation or deliberation." (Italics added.)

Bolton challenges the sufficiency of the evidence to support the lying-in-wait instruction only in regard to the "surprise attack from a position of advantage" factor, claiming there was no evidence of a surprise attack "any more than there would be in any homicide in which one person kills the other after talking to him or her for several minutes." "Lying in wait does not require that a defendant launch a surprise attack at the first available opportune time. [Citation.] Rather, the defendant 'may wait to maximize his position of advantage before taking his victim by surprise.'..." (*People v. Lewis* (2008) 43 Cal.4th 415, 510, citing *People v. Hillhouse* (2002) 27 Cal.4th 469, 501.) We considered similar factual circumstances in *Poindexter*, supra, 144 Cal.App.4th at pages 585-586. There, "defendant and the victim were engaged in a verbal altercation on a public street, with several other individuals in the vicinity. Defendant told the victim something to the effect of 'I'll show you what I mean,' and 'stay here if you want to live.' Defendant then walked to a nearby garbage can, retrieved a shotgun, and returned to the victim within a minute. He carried the shotgun in plain view, pointed down. He said something to the victim, who replied, 'It's not that serious.' Defendant then quickly shot the victim three times with the shotgun...." (*Poindexter*, supra, 144 Cal.App.4th at pp. 585-586, fn. omitted.) The court found a reasonable jury could conclude that all the Morales factors were present. The defendant concealed his purpose with the subterfuge of telling the victim to "stay here if you want to live." (*Id.* at p. 585.) The elapsed period of time was sufficient to "show a state of mind consistent with premeditation or deliberation." (*Id.* at p. 586, fn. omitted.) Finally, the defendant returning with the gun to kill the victim was a "surprise attack on an unsuspecting victim from a position of advantage." (*Id.* p. 586, fn. 23.)

The "surprise attack from a position of advantage" requirement does not mean that the victim must be unaware of defendant's presence. In *People v. Combs*, the court held that the evidence "amply" supported the lying-in-wait special-circumstance finding where defendant devised a ruse about needing a ride to trick the victim into driving him to the desert. Defendant sat in the backseat behind the victim with cords that he had obtained earlier, waiting for an opportune time to kill her. After the victim parked the car, defendant surprised her by placing the electrical cord over her head and strangling her. (*People v. Combs* (2004) 34 Cal.4th 821, 853-854.) Likewise in *Morales*, the court found sufficient evidence of lying in wait where the defendant sat behind the victim in a car, waited until the car was in a more deserted location, and then killed her. (*Morales*, supra, 48 Cal.3d at pp. 554-555.)

*7 Here, Bolton “concealed his murderous intention” by luring Michelle to the park at night under the guise of exchanging custody of their baby. He sent his sister J. to pick up Michelle, knowing that they were friends and Michelle would not suspect anything amiss. Bolton talked to Michelle for about 10 minutes, apparently amiably, in the park. After she said her goodbyes, hugging Bolton, J., and the baby, he attacked her. This plainly took Michelle by surprise, after she had just engaged in a friendly encounter with Bolton and J. Bolton waited until Michelle had handed over the baby and thought she was saying a friendly good-bye to stab her, “ “maximiz[ing] his position of advantage before taking his victim by surprise.” ‘ [Citation.]” (*People v. Lewis*, supra, 43 Cal.4th at p. 510.)

The record demonstrates substantial evidence of Bolton lying in wait. The court did not err in instructing the jury with CALJIC No. 8.25.

C. Admission of Bolton's Taped Statement

1. Voluntary Nature of Statement

Bolton maintains that his statement to police should have been excluded as involuntary because the interrogation was lengthy, coercive, and included “incessant” demands to admit he killed Barfield. When an interrogation is recorded, as it was here, the facts surrounding the giving of the statement are undisputed, and we independently review the determination of the trial court on the ultimate issue of voluntariness. (*People v. Maury* (2003) 30 Cal .4th 342, 404; see also *People v. Jones* (1998) 17 Cal.4th 279, 296.)

“ ‘What the Constitution permits to be admitted in evidence is “the product of an essentially free and unconstrained choice ...” to confess.... The question is whether defendant's choice to confess was not “essentially free” because his will was overborne.’...” (*People v. Jones*, supra, 17 Cal.4th at p. 296, citing *People v. Memro* (1995) 11 Cal.4th 786, 827.) “ ‘Once a suspect has been properly advised of his rights, he may be questioned freely so long as the questioner does not threaten harm or falsely promise benefits. Questioning may include exchanges of

information, summaries of evidence, outline of theories of events, confrontation with contradictory facts, even debate between police and suspect.... Yet in carrying out their interrogations the police must avoid threats of punishment for the suspect's failure to admit or confess particular facts and must avoid false promises of leniency as a reward for admission or confession.... [The police] are authorized to interview suspects who have been advised of their rights, but they must conduct the interview without the undue pressure that amounts to coercion and without the dishonesty and trickery that amounts to false promise.' [Citation.]” (People v. Holloway (2004) 33 Cal.4th 96, 115 (Holloway).) “The determination whether a waiver is voluntary is one entrusted to the trial judge, based on the totality of the facts and circumstances, including the background, experience and conduct of the accused. [Citation.]” (People v. Michaels (2002) 28 Cal.4th 486, 512.)

*8 Bolton first argues that the officers' “incessant” demands that he admit his involvement and their statements that they “knew” he did it rendered his confession involuntary and unreliable. Bolton's argument appears to be that he was coerced into confessing because the detectives were not being truthful about “knowing” that he killed Michelle. Police deception during interrogation, however, is not necessarily impermissible. (People v. Jones, supra, 17 Cal.4th at p. 297.) “Police trickery that occurs in the process of a criminal interrogation does not, by itself, render a confession involuntary and violate the state or federal due process clause. [Citation.] Why? Because subterfuge is not necessarily coercive in nature.... And unless the police engage in conduct which coerces a suspect into confessing, no finding of involuntariness can be made. [Citations.]” (People v. Chutan (1999) 72 Cal.App.4th 1276, 1280.) Moreover, it does not appear that the detectives were being untruthful-police were questioning J. during the same time period, and she told them that Bolton had killed Michelle.

Next, Bolton maintains that the detectives' “incessant” questioning during the “lengthy” interrogation rendered his confession involuntary. Our review of the videotape of Bolton's interrogation reveals otherwise. The interrogation lasted for only two hours, hardly “lengthy.” The detectives, though insistent at times, never threatened Bolton or even raised their voices. Bolton did not appear confused or exceptionally fatigued. Much of the detectives' questioning involved background information and the sequence of events on the evening of the killing. The detectives pointed out inconsistencies between his and J.'s statements, and questioned him about his improbable claim that “some dudes” attacked his wife, yet he failed to try to help her or call police.

As in Holloway, “[w]e conclude the detectives in this case did not cross the line from proper exhortation to tell the truth into impermissible threats of punishment or

promises....” (Holloway, supra, 33 Cal.4th at p. 115.) Bolton has not demonstrated that his statements to the police were involuntary.

2. Waiver of Miranda Rights

Bolton argues that, though he was advised of his rights under Miranda, he never agreed to waive those rights. Accordingly, he maintains that his statements to police made after receiving his Miranda advisements were inadmissible, for the same reasons he argues his statements were involuntary.

“ ‘In reviewing constitutional claims of this nature, it is well established that we accept the trial court’s resolution of disputed facts and inferences, and its evaluations of credibility, if supported by substantial evidence. We independently determine from the undisputed facts and the facts properly found by the trial court whether the challenged statement was illegally obtained. [Citations .]’ ...” (People v. Storm (2002) 28 Cal.4th 1007, 1022-1023, citing People v. Cunningham (2001) 25 Cal.4th 926, 992.)

*9 “To protect the Fifth Amendment privilege against self-incrimination, a person undergoing a custodial interrogation must first be advised of his right to remain silent, to the presence of counsel, and to appointed counsel, if indigent. [Citation.]” (People v. Stitely (2005) 35 Cal.4th 514, 535.) “After such warnings have been given ... the individual may knowingly and intelligently waive these rights and agree to answer questions or make a statement. But unless and until such warnings and waiver are demonstrated by the prosecution at trial, no evidence obtained as a result of interrogation can be used against [the individual].” (Miranda, supra, 384 U.S. at pp. 478-479, fn. omitted.) Miranda explained that “a valid waiver will not be presumed simply from the silence of the accused after warnings are given or simply from the fact that a confession was in fact eventually obtained.” (Id. at p. 475.)

A suspect's waiver of Miranda rights, however, need not be express. “An express written or oral statement of waiver of the right to remain silent or of the right to counsel is usually strong proof of the validity of that waiver, but it is not inevitably either necessary or sufficient to establish waiver. The question is not one of form, but whether the defendant in fact knowingly and voluntarily waived the rights delineated in the Miranda case. As was unequivocally said in Miranda, mere silence is not enough. That does not mean that the defendant's silence, coupled with an

understanding of his rights and a course of conduct indicating waiver, may never support a conclusion that a defendant has waived his rights.... [I]n at least some cases waiver can clearly be inferred from the actions and words of the person interrogated." (North Carolina v. Butler (1979) 441 U.S. 369, 373, fn. omitted.)

"[T]he determination whether statements obtained during custodial interrogation are admissible against the accused is to be made upon inquiry into the totality of the circumstances surrounding the interrogation, to ascertain whether the accused in fact knowingly and voluntarily decided to forgo his rights to remain silent and to have the assistance of counsel. [Citation.]" (Fare v. Michael C. (1979) 442 U.S. 707, 724-725.) The totality of the circumstances approach "permits-indeed, it mandates-inquiry into all the circumstances surrounding the interrogation." (Ibid.) The circumstances to be considered include personal attributes of the defendant such as intelligence, level of education, and prior contacts with the criminal justice system. (North Carolina v. Butler, supra, 441 U.S. at pp. 374-375.) "[W]e cannot assume from a silent record that defendant, having heard a recital of these rights, nonetheless declined to waive them. An express statement of waiver is not required under such circumstances. [Citation.]" (People v. Medina (1995) 11 Cal.4th 694, 752.)

Here, Bolton maintains the "totality of the circumstances" militates against a finding of a waiver of his right to remain silent. He claims the "interrogation was lengthy [and] took place in the coercive atmosphere of a police station," at a time when he was "23 years old [FN8] and had a minimal criminal record...." He also argues that the officers "repeatedly told [him] that his story was different from what his sister was telling them and that he was not being truthful...."

FN8. We note that Bolton was actually 21 years old at the time of the police interrogation.

*10 Bolton was informed of his rights under Miranda, and responded that he understood those rights. He then willingly answered the detectives' questions. As fully discussed above, the record demonstrates that Bolton's admissions to police were voluntary. On this record, waiver can clearly be inferred from Bolton's actions and words. (See North Carolina v. Butler, supra, 441 U.S. at p. 373.)

D. Cumulative Effect of Errors

Bolton also argues that the cumulative effect of the trial court's errors resulted in a miscarriage of justice, requiring reversal. Because we find no error, we reject the claim of cumulative error.

V. DISPOSITION

The judgment is affirmed.

We concur: REARDON and SEPULVEDA, JJ.

Cal.App. 1 Dist.,2008.

People v. Bolton

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- A117037 (Docket) (Mar. 2, 2007)

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