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Briefs and Other Related Documents

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California Rules of Court, rule 8.1115, restricts citation of unpublished opinions in California courts.

Court of Appeal, Fourth District, Division 3, California.
The PEOPLE, Plaintiff and Respondent,
v.
Edgar Mejia HERNANDEZ, Defendant and Appellant.
No. G039235.
(Super.Ct.No. 05NF3238).
June 11, 2008.

Appeal from a judgment of the Superior Court of Orange County, Richard F. Toohey, Judge. Affirmed.
Richard Jay Moller, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Peter Quon, Jr., and Angela M. Borzachillo, Deputy Attorneys General, for Plaintiff and Respondent.

OPINION

RYLAARSDAM, J.
*1 Defendant Edgar Mejia Hernandez was convicted of attempted murder (Pen.Code, §§ 187, subd. (a), 664, subd. (a); all further statutory references are to this code), firing a gun from a motor vehicle (§ 12034, subd. (c)), firing a gun at an occupied motor vehicle (§ 246), and two counts of assault with a firearm (§ 245, subd. (a)(2)). The jury also found he had personally discharged a firearm causing great bodily injury (§ 12022.53, subd. (d)), personally inflicted great bodily injury (§ 12022.7, subd. (a)), and personally used a firearm (§ 12022.5, subd. (a)). He was sentenced to life with the possibility of parole plus 25 years to life.

He appeals, claiming the court erred in denying his motion to suppress his confession because the confession was not voluntary and his waiver of the *Miranda* warning (

Miranda v. Arizona (1966) 384 U.S. 436 [86 S.Ct. 1602, 16 L.Ed.2d 694]) was not voluntary, intelligent, or knowing. We disagree and affirm.

FACTUAL AND PROCEDURAL HISTORY

One evening when Malena Garcia and her husband, Jorge Venegas, were driving, they came to a black car stopped in the street. After Venegas honked his horn, the car moved out of the way, and Garcia and Venegas drove by. When they stopped at a red light, the black car pulled up beside them. Defendant, who was the driver, began screaming and raised his hands in a "[w]hat's up" gesture. Two shots were then fired. Venegas and Garcia found a bullet hole in the fender. The police also found bullet fragments on the floorboards.

The next afternoon Sergio Alonso was visiting his former girlfriend, Samantha Tomieski, and saw a black car drive by. He had seen the same car a week earlier on Tomieski's street. He was told the car belonged to Tomieski's current boyfriend.

That evening Alonso was standing with several members of his family outside his cousins' home when he saw the black car slowly drive past. The driver raised his hands in a "hi" or "[w]hat's up" gesture, then pointed a gun at the group, and shot Alonso. Police who were called knew of the shooting from the night before and that a black car was involved in both incidents.

Officers located a black Lincoln, idling in an alley, approximately one mile from the shooting while defendant was opening a garage door; the car was registered to defendant. Within a few minutes two of Alonso's relatives arrived and told police defendant was the one who had just shot Alonso.

Officer Mari Borkowski asked defendant in Spanish if he would speak to police. As she reached to physically restrain him, he ran. After a short chase he was found in his apartment, where he was arrested.

At the police station, Borkowski read defendant his *Miranda* rights in Spanish. After he waived them, she conducted a videotaped interview of defendant in Spanish about both the shootings. The next day, again after defendant was given and waived his *Miranda* rights, Detective Schroepfer conducted an audiotaped interview with defendant, with Borkowski interpreting. Defendant admitted to both shootings.

*2 As Borkowski testified at trial, defendant told her he shot at the car because it had repeatedly honked at him and was driving too close behind him; that made him angry. He also stated he shot Alonso out of anger. He told her when he had driven by earlier that day playing music, Alonso had put his hands in the air, which defendant interpreted as referring to the music being too loud and meaning, "well, what are you going to do, stupid." Defendant thought, "well, I can't do anything to you right now, but later on I can." Defendant went to his apartment, retrieved his gun, and returned to shoot Alonso.

Before trial, when defense counsel informed the court of doubts as to defendant's competence, the court appointed two doctors to examine defendant. After a hearing, the court found defendant was competent.

Defendant moved to suppress his confessions because, despite a *Miranda* warning, his low intelligence made his confession involuntary. At the hearing on the motion, the interrogating officers testified as did Francisco Gomez, a forensic clinical psychologist called by the defense.

Borkowski testified that she alone questioned defendant, in Spanish, at the police station. Defendant was handcuffed by one hand to the table. She did not display her gun during the interview. As she read and explained each of defendant's *Miranda* rights to him, he said he understood them and wanted to talk to her. During the questioning defendant was calm, understood her, and was able to explain what happened; he did not stutter.

She also testified that she acted as the interpreter in an interview conducted at juvenile hall the next day by Schroepfer; she and Schroepfer were the only officers present and she wore plain clothes. Neither had a gun. Borkowski again gave defendant his *Miranda* warnings in Spanish and defendant understood them. Defendant agreed to talk and understood the questions. Borkowski had no background information about defendant, including his mental ability.

Schroepfer testified that during her interview of defendant, which went about half an hour, defendant answered questions clearly and with sufficient detail; he did not seem confused.

Gomez testified he met with defendant three times to interview him and administer tests. Defendant told him that after he fell off a building when he was between 7 and 10, he was unconscious for several hours and began to have problems in school. Gomez was of the opinion defendant "had some neurological impairments." After conducting several tests, Gomez concluded defendant was mildly retarded with an IQ of between 60 and 70, which is the bottom one to two percent of intelligence.

Gomez also testified he watched the part of the videotape interview where defendant was given his *Miranda* rights. In his opinion defendant's "cognitive ability" prevented him from "be[ing] able to process that information that rapidly and know ... what he was waiving."

*3 Gomez stated he did not verify any information about defendant's head injury. He knew defendant had a job and sent half of his earnings to his mother in Mexico and saved to buy a car. Although defendant stuttered when Gomez talked to him, Gomez did not see or hear him stutter on the tapes of the police interviews.

After the hearing and review of at least a portion of the transcripts of the interviews and the tape, and considering the totality of the circumstances, the court denied the motion, finding that the statements were voluntary.

DISCUSSION

Defendant makes a two-pronged attack on his confessions. He contends he did not knowingly, voluntarily, and intelligently waive his *Miranda* rights nor was his confession itself voluntary.

"In reviewing *Miranda* issues on appeal, we accept the trial court's resolution of disputed facts and inferences as well as its evaluations of credibility if substantially supported, but independently determine from undisputed facts and facts found by the trial court whether the challenged statement was legally obtained. [Citations.]" (*People v. Smith* (2007) 40 Cal.4th 483, 502.)

As to the confession, the prosecution must show by a preponderance of the evidence that under the totality of the circumstances it was voluntary. (*People v. Holloway* (2004) 33 Cal.4th 96, 114.) We independently review the record, deferring to any factual findings if supported by substantial evidence. (*Ibid.*) These include whether there were false promises or coercion by the police, the duration and location of the interrogation, and the defendant's age, education, and mental health. (*People v. Williams* (1997) 16 Cal.4th 635, 660-661; see also *People v. Thompson* (1990) 50 Cal.3d 134, 167.)

Defendant points to the same facts to support both claims: his "mental deficiencies," his young age (17), his unfamiliarity with judicial system, and "his vulnerability to psychological manipulation ..." and in support relies completely on the testimony of Gomez, the forensic psychologist. He also cites several cases and some secondary authority that discuss these factors but they fail to illuminate the actual facts and events here, which do not combine to show either an involuntary confession or an involuntary or unintelligent *Miranda* waiver.

Defendant argues that those who are mentally retarded may not understand the *Miranda* warning itself or its importance. In addition, they may have "[l]imited communication skills" leading them to give confusing answers and respond to questions even though they do not understand them in an effort to please the interrogator. This coincides with Gomez's testimony that, based on defendant's mental impairment, in certain situations he would give affirmative answers to questions if he thought it would please an authority figure.

But there was contrary testimony that defendant appeared to understand his *Miranda* rights and answered questions clearly and without any verbal impairment. The trial judge reviewed the transcripts and the tapes and reached this same conclusion, obviously believing the officers' testimony. We, after our own review of the transcripts, defer to those findings.

*4 Cases defendant cite on this issue are factually inapposite. (E.g., *Reck v. Pate* (1961) 367 U.S. 433, 441-442 [81 S.Ct. 1541, 6 L.Ed.2d 948] [the defendant with below normal intelligence not adequately fed and subjected to lengthy questioning over a week by several officers]; *United States v. Hull* (7th Cir.1971) 441 F .2d 308, 312 [the defendant had low intelligence but interrogated by several groups of officers from midnight until noon next day until he confessed].) This did not happen here.

Other case law supports a finding the *Miranda* waiver and the confession were proper. In *People v. Lewis* (2001) 26 Cal.4th 334, the court affirmed a finding the defendant's confession was voluntary despite his youth (under 14), low intelligence, and subsequent diagnosis of schizophrenia. " ' "Neither a low I.Q. nor any particular age of minority is a proper basis to assume lack of understanding, incompetency, or other inability to voluntarily waive the right to remain silent under some presumption that the *Miranda* explanation was not understood." ' [Citation.]" (*Id* . at p. 384.) There, as here, police who interviewed the defendant testified he did not appear confused.

Likewise, in *People v. Whitson* (1998) 17 Cal.4th 229 the court held the *Miranda* waiver was proper, finding no evidence of police coercion or false promises. (*Id.* at pp. 248-249.) The same is true of our case. In addition, paralleling our case, although the defendant had a somewhat low intelligence, when read his *Miranda* rights, he stated that he understood them and never asked for an attorney or tried to stop the interviews. (*Id.* at pp. 249-250.) It is reasonable to infer the court, which determines credibility, did not believe Gomez's testimony that defendant did not have the ability to clearly process and respond to the *Miranda* advisement.

Although defendant refers several times to "suggestive and coercive techniques" by the police who interrogated him, he is short on factual support and nothing in the record bears out such a claim. The only evidence he advances is that he was interrogated twice in two days, but we reject his conclusion, unsupported by record references, that this was the equivalent of improper "extended periods of incommunicado interrogation." Further, the first interview lasted only one hour and the second went for only 30 minutes.

Additionally, defendant concedes the officers did not display their weapons or use any force, and during one of the interviews he was not handcuffed. During one interview only Borkowski was present, and during the other there were two officers, with Borkowski present only to translate. Further, defendant admits the officers did not promise anything to him in exchange for a confession.

Moreover there is no evidence the police knew of defendant's mental condition. Borkowski testified she had no such information. And defendant acknowledges the officers' testimony that he understood them and had no difficulty speaking to them; he did not stutter nor did he seem confused. "The record does not convince us that the interrogating officers were aware of, or exploited, defendant's claimed psychological vulnerabilities in order to obtain statements from him." (*People v. Smith, supra,* 40 Cal.4th at p. 502.)

*5 Further, the California Supreme Court "has noted that 'the Fifth Amendment is not "concerned with moral and psychological pressures to confess emanating from sources other than official coercion." ' [Citations.]" (*People v. Smith, supra,* 40 Cal.4th at p. 502; see also *Colorado v. Connelly* (1986) 479 U.S. 157, 165-166, [107 S.Ct. 515, 93 L.Ed.2d 473] [although mental condition is relevant to person's susceptibility to coercion by police, confession not involuntary unless result of state's coercive acts].)

Defendant's cases relying on police exploitation of low intelligence are also factually inapt. (E.g., *People v. Neal* (2003) 31 Cal.4th 63, 82, 84 [in addition to low I.Q., the defendant denied opportunity to speak with lawyer and was "confined incommunicado"].) That was not the case here.

Considering the totality of the circumstances, the evidence supporting the court's factual findings, the court's credibility determinations, and our independent review of the record, we conclude defendant waived his *Miranda* rights knowingly, intelligently, and voluntarily, and his confession was voluntary.

DISPOSITION

The judgment is affirmed.

We Concur: SILLS, P.J., and ARONSON, J.

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