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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

CECILY KRYSTAL HANDY,

Defendant and Appellant.

A127802

(Contra Costa County
Super. Ct. No. 05-090652-9)

A jury convicted appellant Cecily Krystal Handy of committing a lewd act on a child under the age of 14. (Pen. Code, § 288, subd. (a).) The trial court suspended the imposition of sentence and placed appellant on probation for five years. Appellant was also ordered to register as a sex offender. (Pen. Code, § 290.) The sole allegation on appeal is that the trial court erred in admitting appellant’s statement to a police officer, as it was taken in violation of *Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*). We find no error and affirm.

I. BACKGROUND

Contra Costa County Sheriff’s Deputy Kimberly Cogo was the sole prosecution witness at the in limine hearing on appellant’s motion to exclude her statements. Deputy Cogo testified that she had been a peace officer for seven years, and had given *Miranda* warnings hundreds of times.

On January 11, 2009, Deputy Cogo and her partner were dispatched to a group home in El Sobrante to investigate a complaint by 11-year-old Jane Doe that she had

been molested by her roommate, 18-year-old appellant.¹ Deputy Cogo and her partner were both in full police uniform, each with a black duty belt equipped with a holstered gun and covered ammunition, a baton, pepper spray, and handcuffs. Deputy Cogo initially spoke with Tegre Miles, the coordinator of the group home. She spoke with Miles in his office, which she described as having several chairs and a desk. The office had two doors, a back door opening to the backyard and a front door connecting to the interior of the residence. Deputy Cogo estimated that the office was large enough to accommodate three king-sized beds. She conducted the entire investigation in the office.

Deputy Cogo first spoke to Jane Doe and Miles about the incident. Deputy Cogo then asked to speak with appellant. A home staff person brought appellant to the office. Once inside the office, appellant chose to sit in a chair. Without being directed to do so, the staff person closed the interior office door, which was near appellant's seat. The back door, however, was left open. Miles was standing near the back door. Deputy Cogo and her partner were seated next to each other across from appellant's chair; no one sat at the desk. Appellant was not handcuffed and was not told she was under arrest. Her movements were not restricted in any way; she was not told where to sit and Deputy Cogo gave her no directions.

Appellant appeared to be scared when she came into the office. When Deputy Cogo asked appellant if she knew why she was there, appellant said, " 'I think I have an idea.' " Deputy Cogo then pulled out her *Miranda* card, but did not read it verbatim. Rather, she summarized "each right," trying to make them more understandable. Deputy Cogo also added words like "honey" as she explained the *Miranda* rights to appellant because she thought of appellant as a child. Although Deputy Cogo could not recall the specific words she used in reciting the *Miranda* rights, she unequivocally testified that she conveyed the substance of each right.² Deputy Cogo explained that, due to

¹ At the time of the incident, appellant and Jane Doe were dependents of the court.

² Deputy Cogo testified that she told the defendant "that she had the right to remain silent," "that anything she said could be used against her in court," "that she could have a

appellant's age, she was trying to be as nonthreatening as possible. Deputy Cogo further explained that she "asked [appellant] if she understood that she didn't have to talk to us if she didn't want to." When asked if she understood "each of the rights . . . explained to her," appellant said "yes." Deputy Cogo's partner was listening during the interview, and did not point out any omissions by Deputy Cogo.

Deputy Cogo then asked appellant for her version of what had happened. At the in limine hearing, Deputy Cogo recounted appellant's narrative admissions of sexually touching Jane Doe and of knowing that what she did with Doe was wrong, and that she could go to jail because Doe was a "much younger kid." At the conclusion of the interview, appellant asked if she was going to jail. Deputy Cogo explained to appellant that based on the acts committed and the girls' respective ages, appellant needed to go to jail. Deputy Cogo then placed appellant under arrest and handcuffed her. The entire conversation between Deputy Cogo and appellant lasted between five and 10 minutes.

Appellant testified at the in limine hearing that she was brought to the office by Sherry Lewis, a supervisor at the group home. Appellant knew that she was going to the office "[t]o talk to the cops," because she heard them talking to Jane Doe. When appellant got to the door of the office, Lewis said " 'The officers want to talk to you.' " Appellant stated that she had never been detained, arrested, or questioned by police prior to that time.

While being questioned by defense counsel, the following exchange occurred:
"[Counsel]: . . . So you just heard some testimony about the Miranda waivers?
[¶] [Appellant]: Yes. [¶] [Counsel]: Let me take you back [to] January 11th. Did you understand what the officer was referring to? [¶] [Appellant]: Not really." On cross-examination, appellant admitted that she never asked Deputy Cogo any questions, never asked her to explain the rights, and never told her that she did not understand.

Ruling from the bench, the trial court denied the motion. In so ruling, the court provided the following reasons: "I'm not convinced that this was even a custodial

lawyer before or during any questioning," "[a]nd that if she couldn't afford a lawyer one could be appointed to her free of charge."

setting. There was a door that was open, although there were four adults in the room, two of them were people she lived with—and in fact people like her parents—who were the adult figures in her life at that time, and so far from being intimidating. I think the idea is for them to have been comforting. And she even referred to them by their first name[s]. It's not a situation where she's feeling intimidated by the presence of those people. The officers were seated the entire time. [They] never . . . pulled duty weapons. They never arrested her. This really was more in the nature of an investigative situation and not an accusatory situation. [¶] And, moreover, the defendant was almost immediately given *Miranda* warnings. The only question that was asked before she was given *Miranda* warnings was, 'Do you know why you're here,' which is completely consistent with an investigative interview So even if it was custodial interrogation or [a] custodial situation, she was given *Miranda* warnings immediately. And the officer testified specifically that—although perhaps not in the exact words—she gave each of the four required admonitions, that she had [the] right to remain silent, that anything she said could be used against her, she had [the] right to an attorney and [one] will be provided to her at no cost if she was unable to afford one. And the officer testified [that] she gave each of those admonitions, perhaps not in the precise language, but you can't have it both ways. You can't say on the one hand that she's 18 and doesn't understand, and on the other one that the officer had to say the words on the card, even though the officer used different words or gentle words to be more appropriate in this case." (Italics added.)

The trial court further explained it was "convinced that the officer did in fact tell her each of those rights, and the defendant did in fact say that she understood them. She did not ask any questions. She did not ask that they be explained. And she did not testify here today that she did not understand any of those specific statements. She was [just asked] generally, 'Did you understand,' and she said, 'Not really.' But that doesn't say that she didn't understand it. I'm not sure what, 'Not really,' means. . . . And I think a reasonable person in her circumstances would understand those things."

II. DISCUSSION

The sole issue on appeal is whether the trial court erred in admitting appellant's statements to Deputy Cogo. Appellant contends that her statements were taken in violation of *Miranda*, as she was subject to custodial interrogation and did not knowingly and intelligently waive her *Miranda* rights.

A. *Standard of Review*

"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." (*People v. Smith* (2007) 40 Cal.4th 483, 502.)

B. *Custody*

Custodial interrogation is " 'questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his [or her] freedom of action in any significant way.' " (*Berkemer v. McCarty* (1984) 468 U.S. 420, 428-429, quoting *Miranda, supra*, 384 U.S. at p. 444.) If there is no custodial interrogation, the *Miranda* rule "simply does not come into play," and there is " 'no occasion to determine whether there ha[s] been a valid waiver.' " (*People v. Mickey* (1991) 54 Cal.3d 612, 648, quoting *Edwards v. Arizona* (1981) 451 U.S. 477, 486.)

Appellant argues that she was in custody for *Miranda* purposes because a reasonable person would not have felt free to terminate the interrogation and leave the office. Even assuming, without deciding, that the interview at the office of appellant's group home qualifies as a custodial interrogation for *Miranda* purposes, she *was* given a *Miranda* warning at the outset of the interview. Accordingly, we proceed to address appellant's claim that she did not knowingly and voluntarily waive her *Miranda* rights.

C. *Form of Miranda Warnings*

Before questioning appellant about her version of the incident with Jane Doe, Deputy Cogo gave the four requisite *Miranda* warnings, advising appellant that she had the right to remain silent; that anything she said could be used against her in court; that

she could have a lawyer before or during any questioning; and that if she could not afford a lawyer one could be appointed for her free of charge. When asked if she understood “each of the rights . . . explained to her,” appellant said “yes.”

Appellant suggests that the warnings were defective because Deputy Cogo did not read the rights verbatim. We are not persuaded by this argument. Although “the warnings prescribed by *Miranda* are invariable,” the law has never “dictated the words in which the essential information must be conveyed.” (*Florida v. Powell* (2010) ___ U.S. ___ [130 S.Ct. 1195, 1198]; see also *People v. Wash* (1993) 6 Cal.4th 215, 236 quoting *California v. Prysock* (1981) 453 U.S. 355, 359 [*Miranda* warnings “need not be presented in any particular formulation or ‘talismanic incantation’ ”].) As noted, Deputy Cogo unequivocally testified that she conveyed the essential information concerning each right. We, therefore, reject the suggestion that the warnings were defective, and instead find that the trial court’s determination that Deputy Cogo adequately provided the *Miranda* warnings is supported by substantial evidence. (*People v. Smith, supra*, 40 Cal.4th at p. 502.)

D. *Implied Waiver and Voluntariness of Statements*

Finally, appellant argues that she did not knowingly and voluntarily waive her *Miranda* rights. Although the burden is on the prosecution to prove by a preponderance of the evidence that the defendant’s *Miranda* waiver was voluntary and intelligent (*People v. Dykes* (2009) 46 Cal.4th 731, 751), “[t]he prosecution . . . does not need to show that a waiver of *Miranda* rights was express. . . . [A] waiver of *Miranda* rights may be implied through ‘the defendant’s silence, coupled with an understanding of his rights and a course of conduct indicating waiver.’ [Citation.] . . . [¶] . . . Where the prosecution shows that a *Miranda* warning was given and that it was understood by the accused, an accused’s uncoerced statement establishes an implied waiver of the right to remain silent.” (*Berghuis v. Thompkins* (2010) ___ U.S. ___ [130 S.Ct. 2250, 2261-2262].)

The inquiry into whether a defendant voluntarily, knowingly, and intelligently waived his or her *Miranda* rights has “two distinct dimensions. [Citations.] First, the relinquishment of the right must have been voluntary in the sense that it was the product

of a free and deliberate choice rather than intimidation, coercion, or deception. Second, the waiver must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it. Only if the ‘totality of the circumstances surrounding the interrogation’ reveals both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the *Miranda* rights have been waived. [Citations.] [¶] . . . [¶] . . . Once it is determined that a suspect’s decision not to rely on his [or her] rights was uncoerced, that he [or she] at all times knew he [or she] could stand mute and request a lawyer, and that he [or she] was aware of the State’s intention to use his [or her] statements to secure a conviction, the analysis is complete and the waiver is valid as a matter of law.” (*Moran v. Burbine* (1986) 475 U.S. 412, 421, 422-423, fn. omitted.)

As noted, in this case the trial court, after hearing testimony of witnesses called by both parties, found that appellant had voluntarily and knowingly waived her *Miranda* rights. As a reviewing court considering the claim that a statement or confession is inadmissible because it was obtained in violation of a defendant’s *Miranda* rights, “ ‘we accept the trial court’s resolution of disputed facts and inferences, and its evaluation of credibility, if supported by substantial evidence. [Citation.] Although we independently determine whether, from the undisputed facts and those properly found by the trial court, the challenged statements were illegally obtained [citation], we “ ‘give great weight to the considered conclusions’ of a lower court that has previously reviewed the same evidence.’ [Citations.]” (*People v. Whitson* (1998) 17 Cal.4th 229, 248.)

With these principles in mind, we consider the evidence and the trial court’s ruling in this case. On the question of the voluntariness of the waiver, the record is devoid of any suggestion that the police resorted to physical or psychological pressure to elicit statements from defendant. To the contrary, Deputy Cogo went out of her way to make the situation as nonthreatening as possible. Appellant was not worn down by improper interrogation tactics, lengthy questioning, or trickery or deceit. (See generally, *Moran v. Burbine*, *supra*, 475 U.S. at pp. 421-424; *People v. Samayoa* (1997) 15 Cal.4th 795, 828-831 [defendant’s comment to police that he did not want his statement tape-recorded held

to be insufficient to support his motion that statement was involuntarily made].) She was not induced to provide her statements by improper promises. The voluntariness of the waiver therefore is clear. (*People v. Whitson, supra*, 17 Cal.4th at p. 248.)

We next turn to the second component of the analysis, which focuses on whether appellant was aware of the rights she was abandoning and of the consequences of her decision to do so. Appellant contends that since Deputy Cogo could not recall the exact verbiage she used in giving the *Miranda* warnings, “there is no telling what rights [appellant] actually understood and waived.” We are not persuaded. To the extent appellant relies on the statements made by Deputy Cogo that she “might have excluded some words” or “said the wrong thing,” substantial evidence supports the trial court’s determination that Deputy Cogo did in fact convey the essential information regarding the four required warnings. Although she could not remember the exact words she used, Deputy Cogo unequivocally testified that she conveyed the substance of each right to appellant and that appellant said she understood each right given. The trial court found appellant’s denial of a general understanding of her rights to be both equivocal and not credible. Appellant’s assertion that she was too upset to understand her rights and the consequences of waiving them raises another credibility issue that the trial court resolved against her, which we find is supported by substantial evidence.

Although appellant was a relatively young adult, who was nervous and scared about being questioned by the police, our review of the record reveals no basis for challenging her statements on the grounds that she did not knowingly and voluntarily waive her *Miranda* rights when she spoke to Deputy Cogo. Our independent review of the evidence leads us to conclude that the trial court’s ruling was sound and that appellant’s waiver of her Fifth Amendment rights was valid as a matter of law.

III. DISPOSITION

The judgment is affirmed.

Reardon, J.

We concur:

Ruvolo, P.J.

Rivera, J.