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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

OLMAN RAMON ARTEAGA,

Defendant and Appellant.

A140356

(San Francisco County
Super. Ct. No. 218279)

Defendant and appellant Olman Ramon Arteaga appeals from the judgment following his conviction of assault with a deadly weapon and battery causing serious bodily injury, with injury and weapon enhancements. He contends the trial court erred in concluding he validly waived his *Miranda*¹ rights during a post-arrest interview. We affirm.

PROCEDURAL BACKGROUND

In July 2012, the San Francisco District Attorney filed an information charging appellant with attempted first degree murder (Pen. Code, §§ 664/187, subd. (a); count one),² with personal use of a deadly and dangerous weapon (§ 12022, subd. (b)(1)) and personal infliction of great bodily injury (§ 12022.7, subd. (a)); assault with a deadly weapon (§ 245, subd. (a)(1); count two), with personal infliction of great bodily injury (§ 12022.7, subd. (a)); and battery causing serious bodily injury (§ 243, subd. (d); count three), with personal use of a deadly and dangerous weapon (§ 12022, subd. (b)(1)).

¹ *Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*).

² All further undesignated statutory references are to the Penal Code.

Appellant filed a motion in limine to exclude appellant's post-arrest statement to the police, arguing the statement was obtained in violation of *Miranda, supra*, 384 U.S. 436 and his Fifth Amendment right against self-incrimination. The trial court denied the motion.

A jury found appellant not guilty of attempted murder, guilty of assault with a deadly weapon, and guilty of battery causing serious bodily injury; the jury found true the injury and weapon allegations associated with counts two and three. The trial court declared a mistrial on the lesser included offense of attempted manslaughter, because the jury was unable to reach a verdict on that offense.

The trial court sentenced appellant to a two-year middle term for assault with a deadly weapon, plus a consecutive three-year term for the great bodily injury enhancement. The court stayed sentence on the battery offense, for a total sentence of five years.

This appeal followed.

FACTUAL BACKGROUND

On or about August 29, 2012, the victim, Raul Garcia Duarte ("Garcia"), was gathered with other people in front of a business in the vicinity of Alameda and Potrero Streets in San Francisco; Garcia went to that location on a daily basis to look for work. Garcia and appellant got into a dispute, and Garcia punched appellant.³

Garcia saw appellant the next day at the same location. Appellant approached Garcia and stabbed him several times with a knife. Appellant was detained and interviewed at a police station. Appellant admitted stabbing Garcia.

DISCUSSION

Appellant contends the trial court erred in denying his motion to suppress his statements made in his post-arrest police station interview. He argues he did not give a knowing and intelligent waiver of his *Miranda* rights and, therefore, his privilege against

³ Garcia testified the dispute occurred on April 30, but it appears the dispute occurred on April 29—the day before the incident that gave rise to the present charges.

self-incrimination under the Fifth Amendment to the federal constitution was violated. We reject the claim.

As a “procedural safeguard[]” to protect the privilege against self-incrimination, prior to any “custodial interrogation” a suspect must be warned “that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed.” (*Miranda*, *supra*, 384 U.S. at p. 444; see also *People v. Whitson* (1998) 17 Cal.4th 229, 244 (*Whitson*)). “After such warnings have been given, and such opportunity afforded him, 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 him.” (*Miranda*, at p. 479.)

“[T]he 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. [Moreover], 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.” (*Moran v. Burbine* (1986) 475 U.S. 412, 421 (*Moran*); accord, *Whitson*, *supra*, 17 Cal.4th at p. 247.) A valid waiver of *Miranda* rights may be express or implied. (*Berghuis v. Thompkins* (2010) 560 U.S. 370, 384, 387–388; *People v. Saucedo-Contreras* (2012) 55 Cal.4th 203, 218–219 (*Saucedo-Contreras*); *Whitson*, at pp. 246, 250.) “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*, at p. 384; see also *id.* at pp. 388–389; *Saucedo-Contreras*, at pp. 218–219, 221; *Whitson*, at pp. 247–250.)

The prosecution bears the burden of demonstrating the validity of the defendant’s waiver by a preponderance of the evidence. (*People v. Dykes* (2009) 46 Cal.4th 731, 751

(*Dykes*.) “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.)

In the present case, appellant argued in his motion to exclude his post-arrest statement there was no evidence he understood and impliedly waived his right to remain silent. The motion asserted appellant “is from Honduras, speaks broken English and has had some but limited contact with the authorities.” The motion continued, although “the inspector advised [appellant] of his rights and asked [him] whether he understood those rights, the inspector failed to ask whether [appellant] wanted to relinquish them.”

At the hearing on appellant’s motion, Sergeant Mario Molina testified he acted as translator during appellant’s post-arrest interview. Sergeant Molina’s first language is Spanish, and he spoke only Spanish until age 17. Sergeant Molina understood appellant’s Spanish, and appellant appeared to understand him and responded to the questions he asked in Spanish. Sergeant Molina testified the officer acting as the main investigator read appellant his *Miranda* rights in English and Sergeant Molina translated the warning into Spanish. The transcript of the interview reflects that appellant verbally confirmed he understood he had the right to remain silent, anything he said could be used against him in court, he had the right to an attorney before and during questioning, and an attorney would be provided free of charge. After each of those advisements, Sergeant Molina asked appellant if he understood, and appellant responded affirmatively. Appellant then answered the main investigator’s questions as translated by Sergeant Molina. At first appellant denied stabbing Garcia, but he subsequently admitted doing so, apparently out of anger due to a prior beating from Garcia and prior conflict with Garcia. Appellant never indicated he did not want to talk to the officers. The officers did not ask appellant for an express waiver of his *Miranda* rights.

Appellant also testified at the hearing on his motion to exclude the statement. He acknowledged he understood Sergeant Molina’s Spanish. Appellant claimed he did not

understand what it meant that he had the right to remain silent and did not understand that his statements could be used “in a big court like this one,” rather than “in a normal court.” He claimed he understood his right to counsel to mean he would receive an attorney in court and did not recall being told he had the right to an attorney before and during questioning.

The trial court denied the motion in limine, finding “the record reflects that, even accepting everything that [appellant] testified as true, . . . he had a sufficient understanding that the statements he made, after being advised of his *Miranda* rights, would be used against him, or could be used against him in a legal proceeding. [¶] And he had a sufficient understanding that he had an entitlement to a lawyer; that there has been established by a preponderance of the evidence that he knowingly, intelligently, and voluntarily waived his *Miranda* rights.”

On appeal, appellant contends he did not knowingly and intelligently waive his *Miranda* rights because he did not fully understand the advisements that anything he said to the police could be used against him in court, and that he was entitled to have an attorney present before and during questioning. We conclude the totality of the circumstances shows appellant validly waived his *Miranda* rights. Sergeant Molina advised appellant of those rights in Spanish, appellant acknowledged he understood each of the rights, and appellant proceeded to talk to the officers about the case. This supports a finding of an implied waiver of the *Miranda* rights. (*Berghuis, supra*, 560 U.S. at pp. 384, 387–388; *Sauceda-Contreras, supra*, 55 Cal.4th at pp. 218–219, 221; *Whitson, supra*, 17 Cal.4th at pp. 247–248.)

Appellant contends his waiver was not knowing and intelligent because he “did not fully understand the consequences” of waiver of his *Miranda* rights. In particular, at the hearing on the motion in limine, appellant claimed not to fully understand what it meant that his statements could be used against him in court. But, as the trial court found, the record shows appellant understood his statements could be used against him in a legal proceeding. The distinction appellant made in his testimony between use of his statements in “big” court and “normal” court does not undermine the validity of his

waiver. Appellant admitted he thought he had been arrested for attacking Garcia, and there is no basis to conclude he did not understand his admission to the stabbing could have criminal consequences. Appellant also claimed not to fully understand he had a right to counsel before and during the questioning, but the record reflects he was informed of that right in plain and clear language. That he later claimed not to recall the advisement does not undermine the validity of his waiver. Finally, although appellant is from Honduras and had no formal education in this country, there is “no evidence that [appellant] . . . lacked sufficient intelligence to understand [the *Miranda*] rights or the consequences of his waiver.” (*Whitson, supra*, 17 Cal.4th at p. 250.)

Although a waiver of *Miranda* rights must be made “with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it” (*Moran, supra*, 475 U.S. at p. 421), appellant’s vague and unspecified assertions that he did not fully understand his rights are not sufficient in the totality of the circumstances to defeat the prosecution’s showing of a valid waiver. The trial court properly concluded the prosecution established the validity of appellant’s waiver by a preponderance of the evidence. (*Dykes, supra*, 46 Cal.4th at p. 751.)⁴

DISPOSITION

The trial court’s judgment is affirmed.

⁴ Because there was no *Miranda* violation, it is unnecessary to address respondent’s contention that any error in admission of appellant’s post-arrest statements was harmless. (See *Sauceda-Contreras, supra*, 55 Cal.4th at p. 221, fn. 5.)

SIMONS, Acting P.J.

We concur.

NEEDHAM, J.

BRUINIERS, J.