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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

RANDALL WATANABE, JR.,

Defendant and Appellant.

C066796

(Super. Ct. No.
10F01846)

A jury convicted defendant Randall Watanabe, Jr., of driving under the influence of alcohol and driving with a blood alcohol level of .08 percent or more. The trial court sentenced him to six years in prison and awarded 201 days of presentence credit (134 actual and 67 conduct).

Defendant contends on appeal that trial counsel was ineffective for failing to raise a *Miranda*¹ challenge to statements he made to the police. In a supplemental brief, he contends that the prospective application of the Criminal Justice Realignment Act of 2011 (Realignment Act) (Stats. 2011, ch. 15) violates his right to equal protection of the law.

We will affirm the judgment.

BACKGROUND

Hannah Stringer was riding in the front passenger seat of her sister's Ford Mustang on March 7, 2010, at around 9:30 p.m. Hannah's sister was driving the Mustang on Elk Grove Boulevard. While the Mustang was stopped at the intersection of Elk Grove Boulevard and Elk Grove-Florin Road, Hannah saw a gold, older model Cadillac speed through the intersection from the opposite direction. Hannah later saw the Cadillac on the side of the road, straddling the southbound lane and a ditch.

As the Mustang slowly approached, the Cadillac abruptly pulled out in front of the Stringers. The Cadillac then sat in the road for about 45 seconds before making a U-turn into the northbound lane. Hannah saw the Cadillac cut off two more cars before heading southbound on the road.

The Cadillac drove southbound in the northbound lane, pulled up next to the Mustang, and then moved behind it. The Cadillac again pulled up next to the Mustang at a stop sign.

¹ *Miranda v. Arizona* (1966) 384 U.S. 436 [16 L.Ed.2d 694] (*Miranda*).

Hannah saw the driver and something on the backseat floor large enough to rise slightly above the backseat.

After pausing at the stop sign, the Cadillac pulled forward and started to drive in circles around the Mustang. The Cadillac drove about eight times around the Mustang, then circled twice and drove southbound on East Stockton Boulevard toward Grant Line Road. As the Cadillac drove south on East Stockton Boulevard, it swerved in and out of the northbound lane, "playing chicken" with oncoming traffic. The Cadillac did circles in the intersection at Grant Line Road. Hannah lost sight of the Cadillac as it drove off to Kammerer Road.

Hannah described the driver as a stocky, light-skinned Hispanic male between 25 to 30 years old, wearing a baseball cap backwards. She was unable to identify defendant as the driver, but she said a picture of defendant's father looked like an older version of the driver.

That same night, Elk Grove Police Officer Chris Morrow responded to a dispatch about a reckless driver near the intersection of Grant Line Road and East Stockton Boulevard. The driver was reported as a light-skinned Hispanic or white male with a backwards baseball cap, driving a gold Cadillac and doing doughnuts in the middle of the intersection. At 9:51 p.m., Officer Morrow received a dispatch about a tan or silver Cadillac going off the roadway and into a ditch at Kammerer Road or Grant Line Road.

Officer Morrow drove to Kammerer Road and found a gold Cadillac in a ditch on the north side of the road about 50 feet

from McMillan Road. No one was in the car, but the keys were in the ignition. Officer Morrow drove west and found defendant heading west about 300 yards from the intersection of McMillan Road and Kammerer Road. Defendant was stumbling just inside the white line on the right side of the road. Defendant was wearing a black tank top and a backwards baseball cap.

Officer Morrow exited his vehicle and asked defendant if he drove the gold Cadillac down the road. Defendant admitted he drove the Cadillac. Defendant said he parked the car in a ditch after it stopped working. Defendant's eyes were glassy and bloodshot, his feet were unsteady, his speech was extremely slurred, and he had a strong odor of alcohol. Officer Morrow detained defendant for public intoxication and put him in the backseat of his patrol car.

Officer Morrow then drove back to the Cadillac, where a check of the registration showed that defendant owned the car. A wallet with defendant's driver's license was on top of the center console. The top portion of the key in the ignition was bent, and there was nothing in the backseat.

Defendant was taken to a safe place to conduct field sobriety tests. Before conducting the tests, Officer Morrow again asked defendant if he drove the Cadillac. Defendant affirmed that he drove it. Officer Morrow then asked defendant where he was going and whether there was anything wrong with the Cadillac. Defendant replied that he was coming from the main jail to his uncle's house, and there was nothing wrong with the car.

Following various sobriety tests, Officer Morrow arrested defendant for driving under the influence of alcohol. According to a blood test at the police station, defendant had a .30 percent blood alcohol level, with an estimated blood alcohol level of .33 percent at the time of his arrest.

Defendant's father, Randall Watanabe, Sr., testified that on the night of the incident he went with defendant to a barbecue at the house of defendant's uncle, Jack Ortega. The father had three to four shots of vodka and about 12 beers between 2:30 p.m. and around 9:00 p.m. Seeing that defendant was slurring his words and walking unevenly, the father said he decided that defendant was in no condition to drive. The father testified that he took defendant's wallet and keys and drove defendant home.

The father admitted driving erratically that night. At some point, the low oil pressure light came on and the Cadillac started losing power. The father allowed the Cadillac to drift into a ditch. According to the father, he turned off the ignition but broke part of the key. He then left defendant passed out in the car while he walked towards an AM/PM and the uncle's house for help.

The uncle testified that the father and defendant left the uncle's home on the night of the incident and that the father was the driver.

Travis Small saw a light colored (possibly gold) sedan in a ditch on Kammerer Road near Grant Line Road on March 7, 2010, at around 9:50 p.m. He saw two males, possibly Hispanic males,

near the car. They looked to be in their 20's, but could have been older. They appeared to be stuck, so Small called 911.

A jury convicted defendant of driving under the influence of alcohol (Veh. Code, § 23152, subd. (a); count one) and driving with a blood alcohol level of .08 percent or more (Veh. Code, § 23152, subd. (b); count two). The jury found true the additional allegation that defendant drove with a blood alcohol level of .015 percent or more (Veh. Code, § 23578). Defendant admitted prior convictions for driving under the influence and vehicular manslaughter while intoxicated within the last 10 years (Pen. Code, § 192, subd. (c)(3);² Veh. Code, §§ 23550.5, 23152, subd. (a)), as well as a strike and two prior prison term allegations (§§ 1192.7, subd. (c), 667.5, subd. (b)). The trial court sentenced defendant to six years in state prison and awarded 201 days of presentence credit (134 actual and 67 conduct).

DISCUSSION

I

Defendant contends trial counsel rendered ineffective assistance by not raising *Miranda* objections to defendant's statements to Officer Morrow after the initial detention. We disagree.

Miranda prohibits custodial interrogation unless the suspect "knowingly and intelligently has waived the right to

² Undesignated statutory references are to the Penal Code.

remain silent, to the presence of an attorney, and to appointed counsel in the event the suspect is indigent. [Citations.]” (*People v. Sims* (1993) 5 Cal.4th 405, 440.) “Custodial interrogation” occurs when a law enforcement officer questions a suspect after placing him or her under formal arrest, or restraining the suspect’s freedom of movement to the degree associated with a formal arrest. (*California v. Beheler* (1983) 463 U.S. 1121, 1125 [77 L.Ed.2d 1275, 1279].)

Defendant argues he was in custody when Officer Morrow detained him for public drunkenness. Since Officer Morrow did not administer *Miranda* warnings, defendant contends the statements he made after the detention were inadmissible.

The defense did not raise a *Miranda* objection at trial, which forfeits the claim on appeal. (*People v. Mattson* (1990) 50 Cal.3d 826, 854 [“a defendant must make a specific objection on *Miranda* grounds at the trial level in order to raise a *Miranda* claim on appeal”].) Defendant instead argues that his trial counsel was ineffective in failing to raise a *Miranda* objection.

To prevail on a claim of ineffective assistance of counsel, defendant must establish his attorney’s representation fell below professional standards of reasonableness and must affirmatively establish prejudice. (*Strickland v. Washington* (1984) 466 U.S. 668, 687 [80 L.Ed.2d 674, 693].) Where the defendant has failed to demonstrate prejudice, we need not determine whether counsel’s performance was objectively deficient. (*Id.* at p. 697 [80 L.Ed.2d at p. 699].) To

demonstrate prejudice, defendant must show that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." [Citations.]" (*People v. Ledesma* (1987) 43 Cal.3d 171, 217-218.)

Officer Morrow asked defendant a series of questions after the detention to prepare for the field sobriety tests. The questioning elicited from defendant that he had no medical or physical condition which would impair his performance on the sobriety tests. Defendant also admitted that he had been drinking, and he admitted several times that he had been driving.

Defendant's intoxication was conclusively established by his blood alcohol level of .33 percent at the time of his arrest; the only issue at trial was whether he or his father was the driver of the abandoned Cadillac. While the post-detention interrogation did get defendant to admit he was the driver, he made the same admission to Officer Morrow in the initial encounter before he was detained. Defendant's initial admission was not the only evidence that he drove the Cadillac. Defendant's driver's license was in a wallet lying on top of the car's center console, and defendant was the only person encountered by Officer Morrow in the vicinity of the abandoned Cadillac.

Defendant argues that his initial admission, if taken alone, could be seen as the product of a confused and

intoxicated mind. According to defendant, if defendant's first statement "was the only admission the jury heard it would not be given as much weight as when coupled with later admissions and statements." Arguing that the case against him was "weak," defendant concludes he was prejudiced by trial counsel's failure to object to the "strongest evidence against [him]," his admissions.

Defendant's first admission and the circumstantial evidence noted above provided compelling evidence that defendant was in fact the driver. His statements after the detention were merely duplicative of this evidence; defendant's claim that they made the initial admission more credible to the jury is too speculative to establish prejudice. Since defendant has not established prejudice, we reject his claim of ineffective assistance.³

II

Defendant committed his crime on March 7, 2010. He admitted a strike allegation that he had a prior vehicular manslaughter conviction, a serious felony. (§ 1192.7, subd. (c)(8).) He was sentenced on November 18, 2010.

The trial court sentenced defendant under the September 28, 2010 revision of the presentence credit law. Under that

³ We deny defendant's motion to take judicial notice of the distance between Kammerer Road and McMillan Road based on a Google Maps query. The proffered evidence is not relevant to our decision, was not before the trial court, and defendant's motion contains no facts or allegations supporting the reliability of a Google Maps query.

version, a defendant with a current or prior serious or violent felony conviction was entitled to two days of conduct credit for every four days of presentence custody. (Former §§ 2933, 4019.)

The Realignment Act amended the law, entitling defendants to two days of conduct credit for every two days of presentence custody. (§ 4019, subs. (b), (c), (f).) The award of credit is not reduced by a defendant's prior conviction for a serious or violent felony. This provision applies prospectively to defendants serving presentence incarceration for crimes committed on or after October 1, 2011. (§ 4019, subd. (h).)

Defendant argues that the prospective application of the conduct credit provisions of the Realignment Act violates his right to equal protection under the law. This claim was rejected by the California Supreme Court in a case decided after the conclusion of briefing. (*People v. Lara* (July 19, 2012, S192784) 54 Cal.4th 896, 906, fn. 9.) Applying *Lara*, we reject defendant's claim.

DISPOSITION

The judgment is affirmed.

MAURO, J.

We concur:

HULL, Acting P. J.

ROBIE, J.