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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

LUE SENG THAO,

Defendant and Appellant.

C068080

(Super. Ct. No. 08F03349)

A jury convicted defendant Lue Seng Thao of attempted first degree murder (count 3; Pen. Code, §§ 664/187)<sup>1</sup>, assault with a firearm (count 1; § 245, subd. (a)(2)), and shooting at an occupied vehicle (count 2; § 246). As to count 3, the jury found true the allegation that defendant personally and intentionally discharged a firearm within the meaning of section 12022.53, subdivision (c). As to count 1, the jury found true the allegation that defendant personally used a firearm in the commission of a felony or attempted felony within the meaning of section 12022.5, subdivision (a). The jury found gang enhancement allegations (§ 186.22, subd. (b)(1)) not true.

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<sup>1</sup> Further references to a section are to the Penal Code.

The trial court sentenced defendant to a term of life with the possibility of parole plus 20 years.

Defendant contends his confession was involuntary, and that he received ineffective assistance of counsel because his trial counsel failed to raise the issue.

#### FACTUAL AND PROCEDURAL BACKGROUND

Prior to the shooting incident in question, defendant had two other encounters with the victim, Choy Saephan. In the first encounter, defendant and his codefendant Alex Lee attacked Saephan at a Hmong New Year celebration. During the second incident, Saephan was traveling in his car with his girlfriend. Saephan's girlfriend told him that defendant was in the car behind them, and when Saephan looked in his rearview mirror, he saw defendant reach under his seat and take out a black handgun, which he cocked.

Just before the incident which was the basis of the charges in question, Saephan saw codefendant Lee at a gas station. Lee was hiding behind a dark green van. When Lee saw Saephan, he placed a telephone call on his cell phone. A little later, as Saephan drove down South Avenue, the green van pulled up behind his car. It then pulled alongside him, and approximately 12 shots were fired. Saephan thought one of the shots was aimed at his head, and another at his body. The final shot went through the trunk, and would have struck Saephan, except a metal bar kept it from going further.

Police discovered bullet casings and a bullet fragment at the scene of the shooting. Six Winchester 0.380 rounds, one bullet fragment, and one spent round were recovered from the scene. There were bullet holes on the trunk, back end, and driver's side rear door of Saephan's car. Particles consistent with gunshot residue were found on the interior front passenger's side of the green van, which defendant thought belonged to Lee's mother.

Detectives Bailey and McCoy interviewed defendant approximately a month after the shooting. They read defendant his *Miranda*<sup>2</sup> rights, which he indicated he understood. Defendant initially denied any involvement in the shooting, but eventually admitted first that he had been present at the shooting, then that he was the one who fired the shots.

Prior to trial, defense counsel brought a motion to exclude defendant's confession on the ground he had not understood the *Miranda* warning because of his limited proficiency in English. The trial court took testimony from defendant. Defendant stated he was nine years old when he came to the United States from Thailand. His primary language is Hmong, although he attended an English-speaking school in Sacramento from the second to the twelfth grade. Defendant was 19 years old at the time of the interview.

The trial court found that defendant spoke to the detectives entirely in English, and asked for the meaning of a word he did not understand. Otherwise, he appeared to understand everything and to answer appropriately. Defendant had a job at Taco Bell that required him to interact with the English-speaking public. The court found the videotaped interview showed that defendant's understanding of English was adequate. The trial court denied defendant's motion to suppress his confession on the ground he had not understood the *Miranda* warning.

The theory of the defense was that defendant was guilty of shooting at an occupied vehicle, but that he had no intent to kill.

#### DISCUSSION

Defendant now claims the trial court should have excluded his confession on the ground it was involuntary. He forfeited this contention by failing to raise it at trial, and

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

his trial counsel did not render ineffective assistance by failing to raise the issue because the confession was voluntary.

Defendant's only ground for claiming a *Miranda* violation below was his claimed inability to understand the advisement because of his lack of proficiency in English. He now claims that his confession was not voluntary because the totality of the circumstances indicates the confession was involuntary. Specifically, those circumstances are: (1) defendant was told the district attorney would somehow go easier on him if he stopped lying; (2) the detectives made several misrepresentations, telling defendant his DNA was on the bullet casings and that there was a videotape showing him shooting at the victim's car; and (3) defendant was young and an immigrant.

“[U]nless a defendant asserts in the trial court a specific ground for suppression of his or her statements to police under *Miranda*, that ground is forfeited on appeal, even if the defendant asserted other arguments under the same decision.” (*People v. Polk* (2010) 190 Cal.App.4th 1183, 1194.) Thus defendant has forfeited the claim that his confession was involuntary by failing to object at trial on the same ground.

Defendant asserts he received ineffective assistance from his trial counsel because trial counsel failed to object to his confession as involuntary. We disagree.

Failure to advance meritless arguments does not render counsel ineffective. (*People v. Shelburne* (1980) 104 Cal.App.3d 737, 744.) The circumstances of defendant's confession, either individually or collectively, did not render it involuntary, thus his trial counsel did not render ineffective assistance by failing to raise this meritless argument.

As to any promise of leniency, the detectives repeatedly told defendant that when they presented his statement to the district attorney, they would tell the district attorney they thought defendant was a liar or was telling the truth. They told defendant they wanted him to “take ownership” for what he had done. They told him he would feel better if he got the truth off of his chest so that he could move forward. They told him

that a judge, a district attorney, and a jury just want someone to tell the truth. Detective McCoy told defendant, “in my experience, when you’re dealing with a judge and D.A.s and lawyers, they’re gonna go a lot easier on someone who tells the truth and admits to their involvement, who basically admits responsibility for whatever they did, as opposed to someone who tries to deceive us and lies about what happened.” The detectives told defendant that the jury would not think he was remorseful if he did not tell the truth.

The detectives did not make any improper promise of leniency, but merely indicated the advantages that would tend naturally to result from a true statement. This does not render a confession involuntary. (*People v. Ray* (1996) 13 Cal.4th 313, 339-340.) The detectives’ statements were not so coercive that they would have produced a statement that was both involuntary and unreliable. (*Ibid.*)

Misrepresentations similarly do not render a confession involuntary. “Where the deception is not of a type reasonably likely to procure an untrue statement, a finding of involuntariness is unwarranted.” (*People v. Farnam* (2002) 28 Cal.4th 107, 182.) Here, as indicated, the detectives misrepresented to defendant that his DNA was on the bullet casings, and that an off-duty officer had filmed the incident showing him shooting at the victim’s car.

False statements that incriminating evidence has been found rarely result in the conclusion that the rational intellect and free will of the defendant has been overcome. (*People v. Farnam, supra*, 28 Cal.4th 107, 182-183; *People v. Musselwhite* (1998) 17 Cal.4th 1216, 1241; *People v. Thompson* (1990) 50 Cal.3d 134, 166-167; *People v. Watkins* (1970) 6 Cal.App.3d 119, 124-125.) The link between the false statement and the confession must be a proximate cause of the confession. (*People v. Musselwhite, supra*, at p. 1241.) There was no such proximate causation here. In fact, the false statements about incriminating evidence did not result in an immediate confession, indicating defendant was able to continue to tell his story without his free will having been overcome.

Finally, although defendant was young he was legally an adult when he was interviewed, and although he was an immigrant he had been in this country for 10 years. None of these circumstances, either individually or together, is sufficient to indicate defendant's confession was involuntary. Consequently, his trial counsel was not ineffective for failing to raise this argument at trial.

DISPOSITION

The judgment is affirmed.

BLEASE, Acting P. J.

We concur:

NICHOLSON, J.

MURRAY, J.