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

In re M. B., a Person Coming Under the Juvenile
Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

M. B.,

Defendant and Appellant.

C070587

(Super. Ct. No. JV132938)

The juvenile court sustained charges against 14-year-old M. B. (the minor) of assault with a deadly weapon with a finding of great bodily injury, burglary, possession of a dirk or dagger, and misdemeanor battery. On appeal, the minor contends the juvenile court prejudicially erred when it denied his motion to exclude from evidence statements he made to police officers which were obtained in violation of his *Miranda*¹ rights. We disagree and shall affirm the juvenile court's order of wardship.

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

FACTUAL AND PROCEDURAL BACKGROUND

At 5:45 p.m. on September 6, 2011, several youths, one of whom was later identified to be the minor, confronted Michael Cater and his female friend at Woodlake Park in Sacramento. The minor struck Cater and when Cater tried to walk away, the minor threw a knife, which stuck in Cater's abdomen. As the minor and his group ran off, Cater pulled the knife out and threw it in a garbage can. Cater then walked to a nearby light rail station where security personnel summoned an ambulance.

Sacramento City Police Officers Balwant Jagur and Luis Smith were dispatched to the light rail station where they found Cater bleeding and drifting in and out of consciousness. Cater was taken by ambulance to a hospital and Officer Jagur accompanied him. Cater described his assailant as a Black or Hispanic male, without hair, and wearing a red T-shirt and black jeans. He described the knife as having a triangular-shaped blade with a circle on the handle.

Around 7:00 p.m. that evening, the minor, who was with several other juveniles, was taken into custody for shoplifting by loss prevention officers at a Sears store. A search of the minor disclosed a knife in his pocket and a pair of boxing gloves stuffed down his pants. Officers Jagur and Smith were dispatched to Sears. Officer Jagur was shown the knife recovered from the minor -- it had a triangular blade with a circle on the handle and a red cloth tied around the handle. The minor was wearing a red-T-shirt and black jeans.

Because the minor matched the description of Cater's assailant in Woodlake Park, Officer Jagur read the minor his *Miranda* rights "verbatim" from a standard police issued card.² After each advisement Officer Jagur asked the minor if he understood what was

² The advisements read by Officer Jagur were as follows: "You have the right to remain silent," "Anything you say may be used against you in court," "You have the right to the presence of an attorney before and during any questioning, if you wish," and "If you cannot afford an attorney, one will be appointed for you, free of charge, before any questioning, if you want."

said and the minor replied, “Yes.” After all the rights were read, Officer Jagur asked the minor if he wanted to speak with him and the minor began talking.

The minor said he had met up with friends earlier and had gone to the Arden Mall. At the mall, Chris, one of the minor’s friends, dared him to steal something from Sears. Chris had two sets of knives and gave one knife to the minor to “shank” anyone who tried to stop him. The minor admitted stealing from Sears, but denied being at Woodlake Park. The minor also claimed that before he went into Sears, he and Chris switched T-shirts.³

At the conclusion of Officer Jagur’s testimony, the prosecutor sought to call Officer Smith, however, the minor made a *Miranda* objection. Defense counsel argued that the minor’s statement to Officer Jagur was obtained in violation of his *Miranda* rights, and that any statement he had given to Officer Smith was also obtained in violation of *Miranda* as well as being the product of coercion. The court denied the motion, but offered to revisit the issue if Officer Smith’s testimony altered the circumstances of the interrogation.

Officer Smith testified he questioned the minor while the latter was in the backseat of the patrol car, handcuffed. Officer Smith told the minor he knew the minor was at Woodlake Park based upon the descriptions given by witnesses of the assailant’s appearance and clothing. He told the minor to be “honest” regarding what had happened. The minor then admitted passing through the park with Chris and three others. Chris argued with a man and flashed a 12-inch Bowie knife at him, but the minor did not know if Chris did anything else to the man. They got on the light rail and, at Chris’s request, the minor exchanged T-shirts with Chris. The minor said he had lied to Officer Jagur because he did not want to be a snitch and be beaten up.

³ The minor was questioned both in the Sears office where he was being detained as well as in Officer Jagur’s patrol car.

At some point during Officer Smith's questioning of the minor, a third officer arrived in a patrol car. Smith believed this third officer was "just milling about," but he was unsure of the officer's whereabouts.

Near the conclusion of Officer Smith's cross-examination, defense counsel renewed his motion to exclude any statements the minor had made to Officer Smith and again the motion was denied.

DISCUSSION

When a defendant challenges a statement purportedly given in violation of *Miranda*, we inquire " 'into the totality of the circumstances surrounding the interrogation, to ascertain whether the accused in fact knowingly and voluntarily decided to forgo his rights to remain silent and to have the assistance of counsel.' " (*People v. Lessie* (2010) 47 Cal.4th 1152, 1169.) Where the "defendant is a minor, the required inquiry 'includes evaluation of the juvenile's age, experience, education, background, and intelligence, and into whether he has the capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights.' The prosecution bears the burden of demonstrating the challenged waiver is valid by a preponderance of the evidence. [Citation.]" (*Ibid.*)

The minor advances three arguments in support of his contention that any waiver of his *Miranda* rights was not knowingly, intelligently and voluntarily made. First, he claims the court's failure to consider his education, background, and intelligence in determining whether he had the capacity to understand and waive the *Miranda* rights as read to him by Officer Jagur precludes any finding of an implied waiver of those rights. Second, he argues that Officer Jagur's failure to ask the minor "whether [he] wanted to give up his rights in order to speak to him" rendered any subsequent statement by the minor involuntary. And third, he claims Officer Smith should have readvised him of his *Miranda* rights because Smith's questioning occurred after a significant change in the circumstances of the interrogation. The record does not support the arguments.

I

The Court's Purported Failure To Consider Minor's Background

The minor claims the juvenile court failed to consider the following factors in determining whether he understood the *Miranda* rights advisement given by Officer Jagur: the minor is a “special education student who was diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) at the age of eight. . . . He has been prescribed psychotropic medications including Adderall, Risperdal and Fluoxetine for ADHD and Intermittent Explosive Disorder.” However, while these factors are contained in reports prepared in another case of the minor, they were never argued or brought to the trial court’s attention as a basis for finding the minor did not understand his *Miranda* rights. “ ‘A verdict or finding shall not be set aside, nor shall the judgment or decision based thereon be reversed, by reason of the erroneous admission of evidence unless: [¶] (a) There appears of record an objection to or a motion to exclude or to strike the evidence that was timely made and so stated as to make clear *the specific ground of the objection or motion*; . . . ’ [Citation.] The rule requiring specificity applies to *Miranda*-based objections and motions to exclude.” (*People v. Holt* (1997) 15 Cal.4th 619, 666.) Consequently, the point has not been preserved for appellate review.

II

Officer Jagur's Failure To Obtain An Express Waiver

By The Minor Of His Miranda Rights

The minor argues that any “ ‘implied’ waiver” by him was invalid because Officer Jagur should have asked the minor “whether [he] wanted to give up his rights in order to speak with [the officer].” Such a question is “important,” the minor claims, because “a young teen . . . may impulsively volunteer incriminating information without actually understanding his rights.” The argument is not persuasive.

“ ‘[A] suspect who desires to waive his *Miranda* rights and submit to interrogation by law enforcement authorities need not do so with any particular words or phrases. A

valid waiver need not be of predetermined form, but instead must reflect that the suspect in fact knowingly and voluntarily waived the rights delineated in the *Miranda* decision. [Citation.] We have recognized that a valid waiver of *Miranda* rights may be express or implied. [Citations.] A suspect's expressed willingness to answer questions after acknowledging an understanding of his or her *Miranda* rights has itself been held sufficient to constitute an implied waiver of such rights. [Citations.].' ” (*People v. Saucedo-Contreras* (2012) 55 Cal.4th 203, 218-219.)

Officer Jagur testified he read the *Miranda* warnings “verbatim” to the minor “per our issued SPD-133 card.” After reading each right, he asked the minor if the minor understood the right, to which the minor responded, “Yes.” At the conclusion of the reading, Officer Jagur asked the minor whether the minor would like to talk to him. When the minor began speaking, Officer Jagur took that as an implied agreement to speak with him.

The court noted in finding the minor understood and voluntarily waived his *Miranda* rights that he was 14 years of age; the hour of the questioning was about 10:00 p.m., which was not particularly late; the minor had been in the mall just prior to the questioning, thereby suggesting he was not fatigued; the *Miranda* rights “are written at a level sufficiently simple that, routinely, [one] would expect a 13- or 14-year-old person to be able to understand them”; “[t]here was no suggestion of deprivation of sleep, or of food or water or comforts”; and it did appear the minor understood the rights because when asked if he wanted to talk he did so. There being nothing whatsoever in the record to suggest the minor did not understand his rights, we find the court's analysis was correct and that there was no need to obtain an express waiver of the minor's *Miranda* rights.

III

Officer Smith's Failure To Advise The Minor Of His Miranda Rights

The minor also argues that Officer Smith should not have relied upon Officer Jagur's advisement to the minor of his *Miranda* rights because there were "significant" changes between the interrogations. These "significant" changes were, according to the minor, an hour difference between when Officer Jagur completed his questioning of the minor and Officer Smith began his questioning as well as "a marked increase in police presence" by the time Officer Smith began his interview with the minor. Again, the argument is not persuasive.

"[The the California Supreme Court] repeatedly has held that a *Miranda* re-advisement is not necessary before a custodial interrogation is resumed, so long as a proper warning has been given, and 'the subsequent interrogation is "reasonably contemporaneous" with the prior knowing and intelligent waiver.' [Citations.]" (*People v. Smith* (2007) 40 Cal.4th 483, 504.) In determining whether readvisement is necessary, "[t]he courts examine the totality of the circumstances, including the amount of time that has passed since the waiver, any change in the identity of the interrogator or the location of the interview, any official reminder of the prior advisement, the suspect's sophistication or past experience with law enforcement, and any indicia that he subjectively understands and waives his rights. [Citations.]" (*People v. Mickle* (1991) 54 Cal.3d 140, 170.)

Here, as explained above, the minor's waiver of his *Miranda* rights was knowingly and intelligently made. Officer Smith also had been present during part of Officer Jagur's questioning of the minor while the minor was detained in the Sears loss prevention office. Although Officer Smith was not present during all of Officer Jagur's questioning of the minor, Officer Smith was in the same area doing paperwork, hence the minor was aware of Officer Smith's presence. Moreover, while Officer Smith was outside the patrol car questioning the minor who was inside the vehicle, Officer Jagur

was leaning on the patrol car to fill out additional paperwork. Nor was this the minor's first contact with law enforcement. At the time Officer Smith questioned the minor, the latter had a separate petition pending for having committed a battery on May 27, 2011. Finally, Officer Smith began questioning the minor less than an hour after Officer Jagur had finished speaking with him. Thus, under the totality of the circumstances, it is reasonable to conclude that the minor remained aware of his *Miranda* rights prior to and during his questioning by Officer Smith.

The minor also claims the circumstances surrounding his questioning by Officer Smith were coercive. The minor points out that his questioning by Officer Smith occurred with Officer Jagur present and a third officer who had arrived in a separate patrol car and was assisting in the investigation. While Officer Smith recalled that this third officer was in the area when Officer Smith was questioning the minor, Officer Smith could not recall what this officer was doing. There simply is nothing in the record to show that the presence of a third officer and another patrol car had any coercive effect upon the minor.

DISPOSITION

The order of wardship is affirmed.

_____ ROBIE _____, J.

We concur:

_____ HULL _____, Acting P. J.

_____ MURRAY _____, J.