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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

IGNACIO CENICEROS MAYON et al.,

Defendants and Appellants.

E054156

(Super.Ct.No. SWF10002232)

OPINION

APPEAL from the Superior Court of Riverside County. Mark E. Petersen, Judge.

Affirmed.

Douglas G. Benedon, under appointment by the Court of Appeal, for Defendant and Appellant Joel R. Hernandez.

Thien Huong Tran, under appointment by the Court of Appeal, for Defendant and Appellant Ignacio Mayon.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, William M. Wood, Bradley A. Weinreb, and James D. Dutton, Deputy Attorneys General, for Plaintiff and Respondent.

# I

## INTRODUCTION<sup>1</sup>

Defendants Joel R. Hernandez and Ignacio Mayon participated in an altercation between Hispanic jail inmates, causing injuries to two other inmates, Jesse Alcaraz and Robert Zamora.

The jury convicted Hernandez of one count of aggravated assault with an enhancement (§ 245, subd. (a)(1), 1192.7, subd. (c)(8), and 12022.7, subd. (a)) and one count of battery. (§ 243, subd. (d).) Hernandez admitted his prior conviction (§ 667, subd. (a)) and prior strike. (§§ 667, subs. (c), (e)(1), and 1170.12.) The court sentenced Hernandez to a total prison term of 14 years.

The jury convicted Mayon of one count of aggravated assault (§§ 245, subd. (a)(1)) and one count of simple battery. (§ 242.) Mayon admitted his prior conviction. (§§ 667, subs. (c), (e)(1), and 1170.12.) The court sentenced Mayon to a total prison term of six years.

On appeal, Hernandez argues his confession should have been suppressed. Mayon argues there was insufficient evidence of aiding and abetting to support his convictions. Both defendants contend the trial court abused its discretion by refusing to strike their prior convictions.

We reject defendants' respective contentions and affirm the judgments in full.

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<sup>1</sup> All statutory references are to the Penal Code unless stated otherwise.

## II

### FACTUAL BACKGROUND

#### *A. Mayon's Attack on Zamora*

Deputy Sheriff Robert McCone testified that he was a correctional deputy employed at the Southwest Detention Center. The inmates are permitted to use the dayrooms on rotation for recreation, telephone calls, and showers. At 9:45 p.m. on September 5, 2010, McCone was supervising four dayrooms, including dayrooms 3 and 4. Defendant Mayon was the trustee for dayroom 3. When McCone flashed the lights to signal the end of the period of dayroom use, there was a commotion in dayroom 3 caused by five or six Hispanic inmates who were fighting. Twelve to fifteen deputies responded. One injured inmate, Robert Zamora, was removed for medical treatment. Photographs taken afterwards showed Mayon had swollen red knuckles.

Zamora testified he was watching television in dayroom 3 when he was attacked. He heard "the biggest one," a trustee, yell, "Keep fucking him up." The person who actually hit him was named Richard Thompson. A few days before the incident, Zamora had given some legal paperwork, which mentioned Jesse Alcaraz, to a trustee. The paperwork contained Zamora's version of another criminal incident, an attempted armed robbery in which Alcaraz participated, but in which Zamora denied being involved. During the jail fight, Zamora suffered a broken nose and other facial injuries and a fractured rib.

During Mayon's interrogation, he said Zamora was attacked because of his "discovery paperwork." Mayon denied participating in the attack.

*B. Hernandez's Attack on Alcaraz*

In dayroom 4, Alcaraz was also attacked and sustained facial bruises, a fractured jaw, and a perforated eardrum. Alcaraz did not see his assailants or know why he was attacked.

Luis Garcia, another inmate, identified defendant Hernandez as the person who was beating up Alcaraz. One of the trustees, Frank Rivera, told Garcia there was a plan to start fighting after the lights were flashed, signaling the end of the dayroom use. Garcia said Rivera had initiated the attack on Alcaraz.

When Hernandez was interrogated, he initially denied participating in the attack on Alcaraz. Subsequently, he admitted punching Alcaraz once in the face and the stomach.

III

HERNANDEZ'S MOTION TO SUPPRESS

Hernandez argued the trial court erred by denying his motion to suppress his confession which he argues was coerced. (*People v. Williams* (1997) 16 Cal.4th 635, 659.) California law involving the implied waiver of a defendant's *Miranda*<sup>2</sup> rights is in accord with federal law. (*People v. Whitson* (1998) 17 Cal.4th 229, 247-248, citing *People v. Davis* (1981) 29 Cal.3d 814, 823-826 [implied waiver upheld where the defendant, a 16-year-old minor, was advised of his *Miranda* rights and responded that he understood them, and thereafter made statements to investigating police officers that led

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<sup>2</sup> *Miranda v. Arizona* (1966) 384 U.S. 436.

to his arrest].)

The proper role of an appellate court in reviewing such a trial court ruling is: “In considering a claim that a statement or confession is inadmissible because it was obtained in violation of a defendant’s rights under *Miranda v. Arizona*, *supra*, 384 U.S. 436, 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 (*ibid.*), we “give great weight to the considered conclusions” of a lower court that has previously reviewed the same evidence.’ [Citations.]” (*People v. Wash* (1993) 6 Cal.4th 215, 235-236.) The voluntariness of defendant’s waiver and confession must be established by a preponderance of the evidence. (*People v. Whitson*, *supra*, 17 Cal.4th at p. 248; *People v. Sapp* (2003) 31 Cal.4th 240, 267.)

#### A. Miranda Waiver

Two deputies began interrogating Hernandez at 3:50 a.m. Hernandez was then 18 years old. After first asking Hernandez several questions and exhorting him to tell the truth, the detectives finally recited the *Miranda* admonitions, which Hernandez said he understood. Hernandez identified Alcaraz as his cellmate and Hernandez claimed he was in his cell when the fight happened. The following exchange occurred:

“[Deputy]: Who else was with you?”

“Hernandez: I’m not answering.”

“[Deputy]: You’re not answering?”

“Hernandez: No.

“[Deputy]: Why not?

“Hernandez: ‘Cause of my [*Miranda*] rights.

“[Deputy]: ‘Cause of your [*Miranda*] rights?

“Hernandez: Yeah.

“[Deputy]: What about ‘em?

“Hernandez: I have the right to stay . . .

“[Deputy]: Remain silent?

“Hernandez: Yeah.”

The officer continued to question Hernandez about other matters until he admitted to hitting Alcaraz once in the stomach and once in the head.

The trial court, found that defendant voluntarily and knowingly had waived his rights: “If, in fact, the defendant hears the warnings and begins to talk and begins to answer the questions, the case law is very clear that if the totality of the circumstances indicates that he understood the warnings and begins to speak of the officer and talk about what happened, the Court can find an implied waiver under those circumstances.” The court also found that defendant’s subsequent refusal to answer did not succeed in invoking *Miranda*: “After . . . looking at this interview in its entirety, after looking at what was said both before and after the words, ‘I’m not answering,’ the Court has found this to be an isolated statement regarding the specific question and it was not an intention to invoke his [*Miranda*]rights as a whole. There was no assertion that the defendant wanted to remain silent from that point on or to stop talking, he merely didn’t want to

answer that question, in other words who[m] else was with him.”

In the present case, the deputy properly admonished Hernandez, who said he understood his rights, and by responding to the officer’s questions demonstrated a willingness to waive his right to remain silent. (*People v. Williams* (2010) 49 Cal.4th 405, 426.) As to the subsequent invocation, a refusal to discuss a particular subject does not constitute an effective *Miranda* invocation. (*Id.* at pp. 433-434.) Based on these factual circumstances and in spite of contrary inferences to be derived from the record, the trial court properly determined Hernandez voluntarily and knowingly waived his *Miranda* rights.

#### B. Coercion

In addition to finding *Miranda* waiver, we conclude there was no coercion, applying the relevant factors of the circumstances of the interrogation and defendant’s personal characteristics. (*People v. Hogan* (1982) 31 Cal.3d 815, 840-841; *People v. Williams, supra*, 16 Cal.4th at p. 660; *In re Shawn D.* (1993) 20 Cal.App.4th 200, 209, 212.) Defendant was an 18 year old who had not finished high school. He had one criminal conviction. One detective referred to him as “fresh” and a “baby dude.” The interrogation began at predawn hour of 3:50 a.m. According to defendant, the detectives pressured defendant, threatened him with a life sentence, and lied to him about the evidence implicating him until defendant finally admitted hitting Alcaraz in the head and stomach.

Notwithstanding the foregoing, a fair reading of the record does not demonstrate coercion. Even if defendant was 18, he did not seem confused or misunderstanding of

the process. After the detective gave the *Miranda* admonition, defendant indicated he understood. He did not object to answering questions. He admitted this was his second time in jail. He continued answering questions after mentioning *Miranda* again. Finally, he admitted to a “slight” involvement for “political” reasons, followed by his admissions. He also affirmatively stated that he chose to answer the detectives’ questions because he did not want “all this blame.” Defendant’s confession was not the product of coercive police activity. (*People v. Williams, supra*, 16 Cal.4th at p. 659.) The trial court did not abuse its discretion in denying the motion to dismiss.

#### IV

#### SUFFICIENCY OF EVIDENCE FOR MAYON’S CONVICTION

Mayon contends insufficient evidence supports his convictions for assault and battery based on a theory of aiding and abetting. The standard for reviewing Mayon’s claim is whether, viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. (*People v. Rowland* (1992) 4 Cal.4th 238, 269-270; *People v. Hill* (1998) 17 Cal.4th 800, 848-849.) All conflicts in the evidence and reasonable inferences must be resolved in favor of the judgment. (*People v. Campbell* (1994) 25 Cal.App.4th 402, 409.)

The required essential elements in this case were that Zamora’s attacker committed the crime; Mayon knew that Zamora’s attacker intended to commit the crime; and Mayon intended to aid and abet the commission of the crime and actually did aid and abet the commission of the crime. (CALCRIM No. 401; *People v. Cooper* (1991) 53

Cal.3d 1158, 1664.) Relevant factors include a defendant's presence at the scene and his conduct before and after the offense. (*People v. Campbell, supra*, 25 Cal.App.4th at p. 409; *People v. Miranda* (2011) 192 Cal.App.4th 398, 407.)

A rational trier of fact could certainly have found that Mayon aided and abetted the attack on Zamora. Mayon, a trustee for dayroom 3, had asked to review Zamora's discovery paperwork that contained information about Zamora and Alcaraz's participation in another crime, suggesting they were both "snitches." Mayon knew the paperwork would give rise to the attack on Zamora. Zamora identified Mayon as the person who incited and encouraged the attack. As such, under the deferential standard of review, Mayon was an aider and abettor, even if not a direct participant. (*People v. Villa* (1957) 156 Cal.App.2d 128, 134-137; *People v. Swanson-Birabent* (2003) 114 Cal.App.4th 733, 743-744.) Sufficient evidence supported Mayon's convictions for assault and battery.

## V

### *ROMERO*<sup>3</sup> MOTIONS

Both defendants, who were 18 years old when their crimes were committed, argue they do not fall within the spirit of the Three Strikes Law and that the trial court should have dismissed their prior strike convictions. (§ 1385, subd. (a).) We review the trial court's ruling for an abuse of discretion. (*People v. Superior Court (Romero), supra*, 13 Cal.4th at p. 504; *People v. Williams, supra*, 16 Cal.4th at p. 210; *People v. Carmony*

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<sup>3</sup> *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497.

(2004) 33 Cal.4th 367, 374.)

As articulated in *People v. Carmony, supra*, 33 Cal.4th at pages 376-377, first, the burden is on the party attacking the sentence clearly to show that the sentencing decision was irrational or arbitrary. In the absence of such a showing, the trial court is presumed to have acted to achieve the legitimate sentencing objectives, and its discretionary determination to impose a particular sentence will not be set aside on review. Second, a decision will not be reversed merely because reasonable people might disagree. An appellate tribunal is neither authorized nor warranted in substituting its judgment for the judgment of the trial judge. Taken together, these precepts establish that a trial court does not abuse its discretion unless its decision is so irrational or arbitrary that no reasonable person could agree with it.

“Consistent with the language of and the legislative intent behind the three strikes law, we have established stringent standards that sentencing courts must follow in order to find such an exception. ‘[I]n ruling whether to strike or vacate a prior serious and/or violent felony conviction allegation or finding under the Three Strikes law, on its own motion, “in furtherance of justice” pursuant to Penal Code section 1385(a), or in reviewing such a ruling, the court in question must consider whether, in light of the nature and circumstances of his present felonies and prior serious and/or violent felony convictions, and the particulars of his background, character, and prospects, the defendant may be deemed outside the scheme’s spirit, in whole or in part, and hence should be treated as though he had not previously been convicted of one or more serious and/or violent felonies.’ ([*People v. Williams* (1998) 17 Cal.4th 148,] 161.)” (*People v.*

*Carmony, supra*, 33 Cal.4th at p. 377.)

An abuse of discretion may be shown in limited circumstances, such as when the trial court is not aware of its discretion or where the court considered impermissible factors in declining to dismiss. It is not enough to show reasonable people might disagree. Instead, there must exist extraordinary circumstances “and no reasonable minds could differ” for the failure to dismiss a strike to constitute an abuse of discretion.

*(People v. Carmony, supra*, 33 Cal.4th at p. 378.)

No abuse of discretion is shown here. When the present crimes were committed, Mayon was in jail for a 2010 first degree burglary conviction. Mayon characterized his involvement in the current offenses as minimal and based on the pressure of “jail politics.” His single previous offense was in the nature of a prank. His youth and future prospects were factors in his favor.

Nevertheless, the court considered the relevant factors and determined Mayon did not fall outside the spirit of the Three Strikes Law. In his previous offense, Mayon had enlisted others to retaliate against the victim for being in contact with his girlfriend. Mayon was in jail when he committed the current offenses. Mayon’s commission of three serious crimes within a short period of time demonstrated a willingness to commit future crimes.

As to Hernandez, he was also in jail, serving time for a recent prior robbery conviction, when he attacked Alcaraz. Hernandez also blamed the pressure of jail politics and cited his youth and family support as favorable factors. His sentence was more severe than the other participants in the attack on Alcaraz.

The court acknowledged Hernandez’s youth. But the court recognized that his previous offense combined with the present offenses showed no remorse and instead showed a willingness to continue to commit crimes, even in jail. Defendant certainly could have refrained from participating in the attack rather than engaging in a high level of violence, inflicting great bodily injury.

In both instances, the trial court carefully reviewed the relevant factors and concluded that neither defendant was outside the spirit of the Three Strikes Law and should not be treated as if he had not suffered his prior conviction. (*People v. Williams, supra*, 17 Cal.4th at pp. 161-164.) We do not hold the trial court abused its discretion.

VI

DISPOSITION

The trial court properly denied Hernandez’s motion to suppress his confession. Sufficient evidence supported Mayon’s convictions. The trial court did not abuse its discretion by refusing to dismiss defendants’ prior convictions. We affirm the judgment.

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CODRINGTON

J.

We concur:

McKINSTER

Acting P. J.

KING

J.