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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.

ANA SOTO CUATLAYOTL,

Defendant and Appellant.

E054410

(Super.Ct.No. RIF138676)

OPINION

APPEAL from the Superior Court of Riverside County. Jean P. Leonard, Judge.

Affirmed.

Alan S. Yockelson, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, William M. Wood, and Kathryn Kirschbaum, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Ana Soto Cuatlayotl appeals after she was convicted of one count of child abuse likely to cause great bodily injury (Pen. Code, § 273a, subd. (a)), with an accompanying allegation that she personally inflicted great bodily injury on a child under age five (Pen. Code, §§ 12022.7, subd. (d), 1192.7, subd. (c)(8)).

Defendant's primary contention is that the trial court should have suppressed any statements she made to police before *Miranda*¹ warnings had been given. The People respond that the statements defendant sought to have suppressed were not made during a custodial interrogation. We agree, and therefore we affirm the judgment.

FACTS AND PROCEDURAL HISTORY

The victim in this case, Baby Doe, was born in 2006. Defendant was a member of the extended family of Baby Doe. Baby Doe and his mother had recently begun residing with the mother's brother and his wife, i.e., Baby Doe's uncle and aunt. The uncle and aunt had two small children, both under age three. Defendant, who also lived in the household, was the sister of Baby Doe's aunt.

In August of 2007, Baby Doe's mother found a job and began working outside the home. Defendant, who was pregnant at the time and already looking after Baby Doe's two young cousins, agreed to begin also caring for 17-month-old Baby Doe while his mother was at work.

About a week or two after defendant began caring for Baby Doe, on the evening of August 23, 2007, his mother noticed that the back of the baby's head was swollen, and he

¹ *Miranda v. Arizona* (1966) 384 U.S. 436 [86 S.Ct. 1602, 16 L.Ed.2d 694].

had scratches on his shoulder. The baby appeared to sleep normally, however, and did not fuss, so the mother went to work as usual the next morning. In the middle of the day, defendant telephoned the mother, reporting that Baby Doe had fainted. The baby's mother told police that defendant had reported that Baby Doe was feeling sick, would not eat, and would not wake up. Baby Doe's mother was finally able to get home in the afternoon, about 4:00 p.m. Baby Doe was lying on a bed, apparently sleeping, but he did not respond when his mother tried to wake him. Baby Doe's aunt drove the baby and his mother to the hospital.

Baby Doe was initially seen in the emergency room of a local hospital, but soon transferred to a pediatric intensive care unit at another hospital. When Dr. Ejike began treating Baby Doe, he was in a coma. Baby Doe had suffered bleeding in the lining covering his brain (subdural hemorrhage), and a fragmented and depressed fracture of the back of his skull. Baby Doe's brain had also suffered a midline shift of one hemisphere toward the other. He was bruised on several parts of his body (abdomen, shoulder, ear, forehead), and he had retinal bleeding in the back of both eyes. Baby Doe was intubated and placed on a respirator. He also required removal of part of his skull (craniectomy) to relieve the pressure of swelling of the brain (cerebral edema).

Baby Doe's prognosis was poor. He was discharged from the hospital several weeks after his injuries, in early October 2007. The injuries resulted in permanent blindness. Baby Doe also breathes with a respirator and takes nutrition with a feeding tube; he cannot communicate or walk.

Detective James Dana of the Riverside Police Department first responded to the family home on the afternoon of August 24, 2007, to investigate suspected child abuse that was reported after Baby Doe's admission to the hospital. There were several people at the home when he arrived, and he and other officers began interviewing each of the six to eight adults who were present to determine what had happened. Detective Dana began interviewing defendant at 5:00 to 5:30 p.m., but the conversation was interrupted when defendant complained of stomach pains. As a precautionary measure, because of her pregnancy, defendant was taken to the hospital and examined.

Defendant was released a short time later, however, and the interview resumed at the police station.

In both interview sessions, at the house and at the police station, a Spanish-speaking officer assisted Detective Dana with the interview. Defendant appeared to understand English fairly well, but Detective Dana wanted to avoid possible confusion or difficulties in communication.

In the initial phase of the interview, at the residence, defendant was not under arrest. Detective Dana questioned defendant specifically about her activities with Baby Doe, because she had been his caregiver that day. This initial portion of the interview lasted from about 20 to 40 minutes.

At that point, defendant complained of stomach pain. As a precaution, because of defendant's pregnancy, she was taken to the hospital.

After defendant was discharged from the hospital, an officer transported her to the police station to complete the interview. On arrival, she was placed in a small interview room and underwent questioning for over two hours. Defendant was not placed under arrest; although Detective Dana did not expressly tell defendant that she was not under arrest, he did tell her that she was free to leave, and that if she desired, an officer would drive her home. Other officers were also interviewing other household members at the station at the same time, because there were several potential suspects in the injuries to Baby Doe.

During the second portion of the interview, at the police station, defendant made several statements in answering questions about Baby Doe's injuries. Among other things, defendant said that one of the other youngsters, J., had hit Baby Doe in the head with a plastic toy guitar the day before Baby Doe was hospitalized. Defendant said that Baby Doe would sometimes throw himself backwards onto the floor, striking his head on the carpet. Defendant also admitted hitting Baby Doe with a flyswatter; she was angry because flies kept landing on him. She threw away the broken flyswatter when J. started using it to hit Baby Doe. Defendant also admitted pushing the baby a day earlier, which had caused him to fall against the wall, striking his head.

As the questioning went on, defendant made statements admitting, for example, that she may have grabbed Baby Doe by the arm hard enough to cause bruising. He was not walking the way she wanted him to, so she pulled him in the direction she wanted him to go. She also said that she had shaken the baby while they were on the floor in the

bedroom, because he was not listening to her. When defendant shook him, he bumped his forehead on the carpeted floor, and accidentally hit his head on the bedpost.

Defendant described how she and Baby Doe had come inside that afternoon, when Baby Doe became pale and fainted. Defendant grabbed up the baby and ran to the kitchen to get some alcohol; she wanted to put alcohol under his nose to revive him. As defendant was getting the alcohol, however, she dropped Baby Doe and he struck the back of his head on the tiled kitchen floor. Defendant put Baby Doe on the bed to sleep for a while, and then later tried to wake him by pushing on his stomach. Defendant was afraid that something was wrong with Baby Doe, but she did not call an ambulance because he was breathing and she believed he would be fine.

At some point during the interview, it was suggested that defendant write a letter to Baby Doe's parents. Defendant wrote a letter asking for forgiveness for what she had done to Baby Doe, for compassion because she was pregnant, and for God to punish her by inflicting similar injuries on her own child.

At the conclusion of the interview, defendant asked what would happen to her. The interviewing officer said that Detective Dana had gone to defendant's house but would return in 15 minutes to explain to her what would happen next. Defendant asked if she could speak with her husband, but the officers demurred, saying, "Not now."

Defendant was charged by information with a felony count of child abuse likely to produce great bodily injury. (Pen. Code, § 273, subd. (a).) It was further alleged that

defendant had inflicted great bodily injury on Baby Doe, a child under age five. (Pen. Code, §§ 12022.7, subd. (d), 1192.7, subd. (c)(8).)

After a number of delays, defendant pleaded guilty pursuant to a plea bargain, but when the court learned that Baby Doe had not recovered from his injuries, the court refused to impose the indicated sentence (probation). Consequently, defendant withdrew her plea of guilty, and the matter was set for trial in 2011.

Before trial began, defendant requested a hearing on the admissibility of her statements to police, because she had never been administered *Miranda* warnings. (*Miranda v. Arizona, supra*, 384 U.S. 436 [86 S.Ct. 1602, 16 L.Ed.2d 694].) The court conducted a hearing under Evidence Code section 402, to determine the circumstances surrounding the interview, i.e., whether the interview was a custodial interrogation. The prosecutor argued that *Miranda* warnings were unnecessary, in reliance on *California v. Beheler* (1983) 463 U.S. 1121 [103 S.Ct. 3517, 77 L.Ed.2d 1275]. In *Beheler*, the defendant voluntarily accompanied officers to the police station for a brief interview. The defendant was not given *Miranda* warnings, and he made certain statements, after which he was allowed to go home. He was arrested five days later and re-interviewed. At the second interview, unlike the first, he was given *Miranda* warnings, and he repeated the same incriminating statements. The statements from both interviews were admitted at trial. The United States Supreme Court held that *Miranda* warnings were not required at the first interview, because the defendant had not been “in custody” for purposes of a custodial interrogation. Here, the prosecutor argued that there were a

number of potential suspects who needed to be interviewed, so that defendant was not the focus of a custodial interrogation.

At the hearing under Evidence Code section 402, Detective Dana testified that, when defendant was brought to the police station for the second portion of her interview, she was told that she was free to leave, that she did not have to answer the officers' questions, and that she would be given a ride home if she desired. At the end of the interview, defendant stated, "I want to know what's going to happen to me here." Detective Dana said, "Well, I told you you were free to leave." Defendant responded, "From the point here I'm going to go home?" Detective Dana informed defendant, however, "No. From here you're going to jail." That is, Detective Dana testified at the evidentiary hearing that defendant "g[a]ve [him] an indication that she wanted to go home," but he told her that she would be transported to the jail.

The court found that defendant was not in custody and that the questioning was not a custodial interrogation. Defendant had not been placed under arrest. She had not been handcuffed at any point. She was told she did not have to answer questions and was free to go. Up until the end of the interview, she still thought she might be going home. Under all the circumstances, the court found that the interview was a noncustodial interview.

After this ruling, recordings of defendant's police interviews were played for the jury. In the middle of trial, defense counsel renewed the objection to the admissibility of some of defendant's un-*Mirandized* statements which had not yet been played for the

jury. The court agreed that the tone of the interview had changed, and agreed that some of the statements should have been redacted. However, on listening in chambers to the remaining portion of the interview, the court ruled that the interview remained essentially on the “same level,” and overruled counsel’s objection. The court stated, “just because a detective becomes stern during an interview doesn’t necessarily mean that the . . . person being interviewed cannot leave the room.” Other family members were also being interviewed at that time in different places; consequently, the court concluded that the officers were still in an investigative stage of inquiry.

The defense theory of the case was that the injuries to Baby Doe might have been accidental, or that someone other than defendant could have injured the baby. The medical experts could not say for certain how old various bruises on Baby Doe’s body were, or when the swelling and hemorrhaging in Baby Doe’s brain began.

The jury returned a verdict finding defendant guilty of felony child abuse likely to cause great bodily injury and made a true finding on the allegation that defendant had inflicted great bodily injury on Baby Doe.

Defendant was sentenced to a prison term of nine years, consisting of the middle term of four years for the felony conviction and five years consecutively on the enhancement.

Defendant filed a timely notice of appeal.

ANALYSIS

I. The Trial Court Properly Admitted Defendant's Statements to Police

Defendant raises the same issue argued below: that the interview with police was a custodial interrogation for which *Miranda* warning should have been issued. Because defendant was not given the proper admonitions as to her constitutional rights, her statements to police were inadmissible and should have been excluded at trial.

A. Standard of Review

Whether a defendant was in custody for *Miranda* purposes is a mixed question of law and fact. In reviewing a trial court's determination that a defendant did not undergo custodial interrogation, an appellate court applies two different standards. It must "'apply a deferential substantial evidence standard' [citation] to the trial court's factual findings regarding the circumstances surrounding the interrogation.'" (*People v. Leonard* (2007) 40 Cal.4th 1370, 1400.) In addition, it must independently determine whether those factual circumstances support the legal conclusion that the defendant was "in custody" for purposes of *Miranda*. (*Ibid.*)

B. Defendant's Police Interview Was Not a "Custodial Interrogation"

To invoke the protections of *Miranda*, a suspect must be subjected to a "custodial interrogation." This occurs when a person is "taken into custody or otherwise deprived of his [or her] freedom of action in any significant way." (*Miranda v. Arizona, supra*, 384 U.S. 436, 444 [86 S.Ct. 1602, 16 L.Ed.2d 694].) "[T]he ultimate inquiry is simply whether there is a 'formal arrest or restraint on freedom of movement' of the degree

associated with a formal arrest.” (*California v. Beheler, supra*, 463 U.S. 1121, 1125 [103 S.Ct. 3517, 77 L.Ed.2d 1275], quoting *Oregon v. Mathiason* (1977) 429 U.S. 492, 495 [97 S.Ct. 711, 50 L.Ed.2d 714].) Where no formal arrest has taken place, the pertinent question is “how a reasonable [person] in the suspect’s position would have understood [the] situation.” (*Berkemer v. McCarty* (1984) 468 U.S. 420, 442 [104 S.Ct. 3138; 82 L.Ed.2d 317].)

“California courts have identified a number of factors relevant to this determination. While no one factor is conclusive, relevant factors include: “(1) [W]hether the suspect has been formally arrested; (2) absent formal arrest, the length of the detention; (3) the location; (4) the ratio of officers to suspects; and (5) the demeanor of the officer, including the nature of the questioning.” (*People v. Pilster* (2006) 138 Cal.App.4th 1395, 1403; *People v. Forster* (1994) 29 Cal.App.4th 1746, 1753; *People v. Lopez* (1985) 163 Cal.App.3d 602, 608.)

“Additional factors include: ‘[W]hether the suspect agreed to the interview and was informed he or she could terminate the questioning, whether police informed the person he or she was considered a witness or suspect, whether there were restrictions on the suspect’s freedom of movement during the interview, and whether police officers dominated and controlled the interrogation or were “aggressive, confrontational, and/or accusatory,” whether they pressured the suspect, and whether the suspect was arrested at the conclusion of the interview.’ (*People v. Pilster, supra*, 138 Cal.App.4th at pp. 1403-

1404, citing *People v. Aguilera* [(1996)] 51 Cal.App.4th [1151,] 1162.)” (*People v. Bejasa* (2012) 205 Cal.App.4th 26, 35-36 [Fourth Dist., Div. Two].)

Here, the factual circumstances included:

Defendant was not placed under arrest, either at the residence or at the station. When defendant became physically distressed (at the residence), she was immediately transported to a medical facility. After she was discharged, she was transported to the police station, riding in the front seat of a police vehicle. On arrival, she was taken to an interrogation room. Detective Dana expressly advised defendant, however, that she did not have to answer questions, that she was free to leave, and that she would be given a ride home. Evidence adduced at the in limine hearing indicated that defendant inquired whether she would be returning home at the conclusion of the interview; the prosecutor had argued, and the court appeared to accept, that this request substantiated defendant’s awareness that she was free to leave, right up until the end of the interview. Defendant was never handcuffed at any point. Multiple officers were involved in the investigation, and other persons were being interviewed at the same time. It appears that Baby Doe’s mother was also for a time under serious consideration as a suspect. The questioning at the station took place during a period of over two hours, but the interview process was made more lengthy by the necessity of English-Spanish and Spanish-English translation. At times, there were three officers present during defendant’s interview: two detectives and the translating officer. The detectives wore plain clothes. All participants sat at a conference table in the interview room. During some portions of the time, Detective

Dana left the room to return to the residence or to go elsewhere to conduct further inquiries or investigations into the matters that defendant had related. For example, after defendant told officers about hitting Baby Doe with the flyswatter, and throwing the implement into the trash, the trash at the residence was searched and the flyswatter recovered. The questioning became more forceful as time went on, and defendant was pressed for more details, or to explain inconsistencies between her statements and Baby Doe's actual injuries.

Under the totality of the factual circumstances presented to and found by the trial court, we conclude, under independent review, that defendant was not "in custody" for purposes of *Miranda* during her station house interview.

On appeal, defendant argues that she had limited life experience, limited language skills, and limited contact with law enforcement, suggesting that she did not understand that she did not have to talk to the officers or that she was free to leave. To the contrary, however, the circumstances of the interview demonstrated that defendant had a fairly good understanding of English, even if she could not always respond in English.

The salient factors weigh against a finding of custodial interrogation. Defendant was not arrested or handcuffed. At the beginning of the interview, at the residence, her medical needs were addressed immediately. That the interview took place at the police station does not transform the situation into a custodial one. (See *People v. Stansbury* (1995) 9 Cal.4th 824, 833 [a police station setting does not render an interview custodial].) Defendant was brought to the station in the front seat of a police car, which

militates against a finding of custodial restriction. The station house interview took place in a setting in which all participants sat around a table. Other people were being investigated at the same time. Defendant was expressly advised that she did not have to answer questions, that she was free to leave at any time, and that she would be given a ride home. A reasonable person under the circumstances would have understood that she was free to leave. Defendant was not “in custody” during the interview so as to require the giving of *Miranda* warnings. The trial court therefore properly admitted the evidence of defendant’s admissions at trial.

DISPOSITION

Defendant was not subjected to a custodial interrogation. Her statements to police were properly admitted. The judgment is therefore affirmed.

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MCKINSTER
J.

We concur:

HOLLENHORST
Acting P. J.

RICHLI
J.