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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.

MICHAEL ANGEL MEJIA,

Defendant and Appellant.

E064637

(Super.Ct.No. FSB1501748)

OPINION

APPEAL from the Superior Court of San Bernardino County. J. David Mazurek, Judge. Affirmed.

Richard Schwartzberg, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, and Charles C. Ragland and Teresa Torreblanca, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted defendant and appellant Michael Angel Mejia of one count of possession of a firearm by a prohibited person (Pen. Code,¹ § 29800, subd. (a)), and found true one allegation that he had suffered a prior “strike” conviction (§ 667, subds. (d)-(i)) and two prior prison term allegations (§ 667.5, subd. (b)). Defendant was sentenced to an aggregate prison term of eight years.

On appeal, defendant contends that the trial court erred by denying his motion to suppress statements he made to the police while in custody because he did not waive his *Miranda*² rights. We affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

On May 20, 2015, police officers went to an address in Redlands to serve an arrest warrant on William Norris, aka “Beetle”; they had information that Beetle was residing in a detached garage at that address. As the officers walked up the driveway toward the residence, they encountered defendant, who was familiar to at least one of the officers; defendant approached them, walking out from the backyard. One of the officers asked defendant if Beetle was staying in the garage. Defendant responded that Beetle had just left, and that no one was in the garage. An officer asked for, and received, defendant’s consent to go into the garage to search for Beetle.

¹ Further undesignated statutory references are to the Penal Code.

² *Miranda v. Arizona* (1966) 384 U.S. 436.

When officers entered the garage, they did not find Beetle, but did observe a rifle in plain view, leaning against a cabinet. The rifle had a crack in its stock, which appeared to have been repaired. One of the officers ran a records check on defendant and determined that he was not permitted to possess a firearm. The officer then asked defendant whether the rifle belonged to him. Defendant responded that it belonged to a friend, and that he was just working on it to fix the stock. The officer also contacted the owner of the property, defendant's uncle, who lived in the main house on the property; defendant had been residing in the garage, for rent of \$150 a month, for the previous year and a half.

Defendant was arrested and brought to the police station, and the arresting officer interviewed him. The officer first read defendant his *Miranda* rights from a card, concluding with two questions: "Do you understand the rights I read to you? Having these rights in mind, do you want to talk to me about the rifle?" Defendant did not directly answer either question, responding "I just talked to you about it. I mean if you have any questions, I'll answer them. Is it going to change anything?"

After answering defendant's question in the negative, and a brief discussion on that topic, the officer asked, "Do you want to talk to me or not"? Again, the defendant did not directly respond, asking "what difference is it going to make?" The officer confirmed to defendant that he would be going to jail regardless, and stated that "if you want to talk or not, if you don't want to talk, that's cool, if you want to talk then that's great." Defendant responded by asking for something to drink.

Water was provided; the officer offered more water twice; the defendant accepted the first time, and responded “That’s fine, thank you” the second time. The officer then proceeded to question defendant, starting by asking “who’s this friend of yours?” Defendant answered the officer’s questions, declining to identify the friend by name, but stating among other things that he had taken the rifle to repair the crack in the stock, in exchange for a small fee.

Prior to trial, defendant moved to exclude from evidence the statements he made while in custody. After a hearing, the trial court denied the motion, finding the statements admissible. During trial, an audio recording of defendant’s in-custody interview was played for the jury. During deliberations, the jury requested, and was provided, copies of the transcript of the interview.

Defendant’s bifurcated trial was conducted over several days in August 2015. The jury returned its guilty verdict on the charge of possession of a firearm by a prohibited person on August 10, 2015. The jury returned true findings with respect to the strike allegation and two prison prior allegations on August 11, 2015.

On October 7, 2015, the trial court imposed an aggregate sentence of eight years, as follows: three years for the charge of possessing a firearm as a prohibited person, doubled by the strike enhancement to six years, plus a one-year term for each of the two prison prior enhancements.

II. DISCUSSION

Defendant contends that his in-custody interview with police should have been suppressed, because police failed to obtain either an explicit or implicit waiver of his

Miranda rights prior to questioning. We find no error, and in the alternative, that any error was harmless.

A defendant need not expressly waive his or her *Miranda* rights for a confession to be valid; rather, the trial court may find the defendant impliedly waived these rights. (*Berghuis v. Thompkins* (2010) 560 U.S. 370, 384-385 (*Berghuis*)). An implied waiver may be found when the defendant is advised of and understands his rights and then proceeds to answer questions. (*People v. Hawthorne* (2009) 46 Cal.4th 67, 87; see also *North Carolina v. Butler* (1979) 441 U.S. 369, 373 [waiver may be “implied” through a “defendant’s silence, coupled with an understanding of his rights and a course of conduct indicating waiver”].) A silent record alone is insufficient to establish that the defendant understood his or her rights, but understanding may be inferred from the circumstances of the case. (*Berghuis, supra*, at p. 384.) “Although there is a threshold presumption against finding a waiver of *Miranda* rights [citation], ultimately the question becomes whether the *Miranda* waiver was knowing and intelligent under the totality of the circumstances surrounding the interrogation.” (*People v. Cruz* (2008) 44 Cal.4th 636, 668.)

In reviewing a trial court’s ruling on a motion to suppress evidence based on a *Miranda* violation, we “accept the trial court’s resolution of disputed facts and inferences, and its evaluation of credibility, if supported by substantial evidence.” (*People v. Kelly* (1990) 51 Cal.3d 931, 947.) “Although [the reviewing] court must independently determine from the undisputed facts, and those properly found by the trial court, whether the challenged statements were legally obtained [citation], [it] may “give great weight to

the considered conclusions” of a lower court that has previously reviewed the same evidence.”” (*Ibid.*)

Here, the totality of the circumstances establish that defendant’s waiver of his *Miranda* rights was knowing and intelligent. There is no dispute that defendant was advised of his *Miranda* rights. The officer not only formally read the defendant his rights from a card, but also reiterated defendant’s right to remain silent in a more informal manner, stating “if you don’t want to talk, that’s cool, if you want to talk then that’s great.” Although defendant did not explicitly acknowledge his understanding of those rights, the circumstances of the case support the inference that defendant did in fact understand them. There is no indication in the record that defendant could not understand English, was under the influence of any substance, or otherwise had difficulty understanding his rights as they were explained to him. And defendant has never contended, either in the trial court or on appeal, that he did *not* understand his rights; “from this it follows that he knew what he gave up when he spoke.” (*Berghuis, supra*, 560 U.S. at p. 385.)

Moreover, defendant was given an opportunity to invoke his *Miranda* rights after they were explained to him, both formally and informally. He nevertheless chose not to remain silent, or to explicitly invoke his rights. To the contrary, after being read his rights, he stated that he was willing to answer the interviewing police officer’s questions: “[I]f you have any questions, I’ll answer them.” And he then proceeded to respond to questions. Defendant therefore engaged in a course of conduct indicating waiver.

Finally, there is no evidence, and no contention by defendant, that his in-custody statements to police were coerced.

We conclude that defendant's *Miranda* waiver was knowing, intelligent, and voluntary under the totality of the circumstances surrounding his interrogation. As such, his *Miranda* rights were not violated, and the trial court properly denied his motion to suppress his in-custody statements to police.

Furthermore, even if admission of defendant's in-custody statements were erroneous, any error would be harmless beyond a reasonable doubt. (*Chapman v. California* (1967) 386 U.S. 18, 24.) Defendant is correct that his "admission to possession [of the rifle], even for the purposes of making a repair, was the key evidence resulting in conviction." He made this admission, however, more than once. Defendant told officers on the scene, prior to being detained, that the rifle did not belong to him, but he was repairing it for a friend. Defendant's in-custody statement to the same effect, also admitting that he had possession of the rifle for purposes of repairing it, was cumulative of that earlier admission. Beyond any reasonable doubt, the result of defendant's trial would have been the same, regardless of any error with respect to the admission of his in-custody statements to police.

III. DISPOSITION

The judgment is affirmed.

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HOLLENHORST

J.

We concur:

RAMIREZ

P. J.

CODRINGTON

J.