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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

YAKINI DEANDRE BYRD,

Defendant and Appellant.

F062412

(Super. Ct. No. F09902366)

OPINION

APPEAL from a judgment of the Superior Court of Fresno County. Edward Sarkisian, Jr., Judge.

Susan D. Shors, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, and Kathleen A. McKenna, Deputy Attorney General, for Plaintiff and Respondent.

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INTRODUCTION

Appellant Yakini Deandre Byrd was convicted of first degree murder with a firearm enhancement. He was sentenced to a total term of imprisonment of 50 years to life. Byrd contends the trial court erred in admitting into evidence his statement to the police. We disagree and will affirm.

FACTUAL AND PROCEDURAL SUMMARY

On April 19, 2009, a shooting took place on Eunice Street and Officer David Unruh responded. Another officer on the scene was attending to the victim, Robinlene Upshaw, so Unruh started interviewing witnesses. Upshaw's niece, Monet Miller, was interviewed by Unruh.

Miller told Unruh that she was standing by her aunt's car, talking with her aunt. She saw the suspect walk up from behind the car carrying a short-barreled rifle. Miller claimed she had never seen the suspect before.

Detective Mark Yee also interviewed Miller the day of the shooting at police headquarters. Miller told Yee she was standing about three feet away from Upshaw when the shooting took place. The shooter was holding the rifle with both hands and was only a foot or two from Upshaw's car when he fired the rifle. Another witness, Richard Leavy, ran away; the shooter pointed the rifle at Leavy, then walked away.

Miller said someone told her the shooter's name; she recognized the name; and the shooter was related to Leavy. Miller described the shooter as a thin, Black male with short hair, about 19 years old. Leavy was Upshaw's boyfriend.

Yee showed Miller a collection of photographs, including Byrd's, after cautioning her that the shooter's photo may not be in the group. Miller selected Byrd's photo as the person who shot Upshaw. Miller initialed the photo.

On the day of the shooting, Leavy told Officer Donald Dinnell that he heard a loud pop; heard Miller exclaim that Upshaw had been shot; and saw his second cousin, Byrd,

run away. Several months later, Leavy told Detective Garcia he did not want to be a “snitch” and did not want to testify because he was afraid he would be killed.

Dinnell transported Willie Heager to police headquarters on the day of the shooting. While being transported, Heager told Dinnell that the shooter was Byrd and provided information about where Byrd might be found. Heager told Dinnell he saw Byrd shoot Upshaw.

Detective Yee conducted a recorded interview of Willie Heager on the day of the shooting. The interview was played at trial. Heager told Yee he saw Byrd approach Upshaw and Miller and fire the rifle. Then Byrd ran away.

Yee and Detective Ray Villalvazo interviewed Byrd; the recorded interview was played for the jury and also transcribed. Yee advised Byrd of his rights under *Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*) and explained those rights to Byrd. Byrd told the detectives he heard people were telling on him; Byrd claimed they were lying.

Byrd initially stated someone had put him up to it because he was young; then he stated he didn’t remember what happened. Byrd stated the reason for the shooting was drugs. Byrd vacillated between making admissions and denying culpability. Near the end of the interview, Byrd stated:

“I did it to that bitch because she was doing the wrong things just like that nigga was doing the wrong thing nigga. And I don’t give a fuck about what nobody think. I mean, that’s just how I feel, you got me[?]”

On October 8, 2009, Byrd was charged with first degree murder; the information alleged he was 16 years old at the time. It also was alleged that Byrd intentionally discharged a firearm causing death. On March 23, 2011, the jury returned a verdict of guilty as charged and a true finding on the firearm enhancement.

The trial court imposed a term of 25 years to life for the first degree murder conviction and an additional 25 years to life for the firearm enhancement.

DISCUSSION

Byrd's sole contention on appeal is that the trial court erred prejudicially in admitting his statement. He contends his mental condition made him incapable of waiving his *Miranda* rights; the police used deceptive tactics; and his statements were the product of coercion. The record discloses Byrd's contention is without merit.

Factual Summary

We set forth the relevant facts, which we take from the hearing on the suppression motion, in the light most favorable to the trial court's ruling on the motion. (See *People v. Miranda* (1993) 17 Cal.App.4th 917, 922 ["In reviewing the denial of a motion to suppress evidence, we view the record in the light most favorable to the trial court's ruling and defer to its findings of historical fact, whether express or implied, if they are supported by substantial evidence"].)

Byrd filed a motion to suppress his statement, asserting the statement was the product of coercion and that he did not knowingly and intelligently waive his rights. The trial court conducted an Evidence Code section 402 hearing on the motion over the course of several days.

Byrd was under arrest when he was interviewed; the interview commenced around 10:00 p.m. Byrd was on felony probation when he was arrested. Yee and Villalvazo were dressed in civilian clothes and were not wearing their firearms during the interview. At the start of the interview, Byrd indicated he was a high school junior and "a decent student." When asked if he could understand the detectives, Byrd responded, "Yeah, real good." Yee did not notice any symptoms of Byrd being under the influence of any substance.

Yee proceeded to read the card informing Byrd of his *Miranda* rights and to ask if Byrd understood each of those rights. Byrd shook his head, but did not answer audibly. Yee interpreted the head shaking to mean that Byrd was indicating he did not understand, although Yee did not believe Byrd had any difficulty in understanding his rights.

However, Yee attempted to clarify what he had read to Byrd and showed Byrd the *Miranda* advisement card. After reading the card and after Yee explained a few portions of the advisement again, Byrd indicated he understood.

In opposition to the motion to suppress, four police officers testified about four prior occasions when Byrd had been arrested, advised of his rights, and indicated he understood those rights.

Doctor Avak Albert Howsepian, a staff psychiatrist with the Veterans Administration, was asked by the defense to evaluate Byrd. Howsepian interviewed Byrd twice and opined that Byrd was suffering from a psychotic disorder on the day he was interrogated. Howsepian indicated Byrd's psychotic disorder was evidenced by his contradictory and nonsensical answers and vague references. Also, Howsepian indicated that some of Byrd's answers seemed to indicate Byrd was hallucinating.

Howsepian opined that a person with Byrd's level of psychosis would be incapable of understanding his *Miranda* rights. He also opined that a normal 16-year-old boy would be unable to understand the advisements.

Howsepian was retained initially to determine Byrd's sanity for an insanity defense. Howsepian disagreed with assessments by three other doctors that Byrd suffered from a conduct disorder and that he exaggerated his hallucinations. Howsepian acknowledged that, at the beginning of the police interview, there was no indication Byrd was delusional; however, Howsepian felt the comment "people are saying I did it" indicated paranoid thinking by Byrd. Howsepian also acknowledged that Byrd had denied hearing voices or acting abnormally at the time he was interviewed by police.

The trial court cited *People v. Lessie* (2010) 47 Cal.4th 1152 and noted that the court had reviewed the transcript of the police interview, listened to the taped interview, and considered all the testimony given on the suppression motion. The trial court found no evidence that Byrd had been intimidated or spoke to officers only because he was submitting to their authority. The trial court also found that any mental health issues

Byrd had did not render him incapable of understanding *Miranda* advisements, noting that Byrd was capable of insuring statements made to Howsepian would not be used against him.

In a totality of the circumstances analysis, the trial court noted that Byrd had been offered water or soft drinks by the detectives; had been advised of his *Miranda* rights at least five times in a two-year period; had acknowledged that he understood he did not have to talk with anyone and that he could ask for a lawyer at any time. The trial court found Byrd had knowingly and intelligently waived his rights and concluded by denying the suppression motion.

Standard of Review

“A suspect, having been advised of his *Miranda* rights, may waive them ‘provided the waiver is made voluntarily, knowingly and intelligently.’ [Citation.]” (*In re Norman H.* (1976) 64 Cal.App.3d 997, 1001.) The prosecution bears the burden of establishing by a preponderance of the evidence that the relinquishment of rights was voluntary and that the suspect’s waiver was made with full awareness of those rights and the consequences of the waiver. The validity of a *Miranda* waiver is a factual matter to be decided by the trial judge based on the totality of the circumstances, including both the characteristics of the accused and the details of the interrogation. (*People v. Whitson* (1998) 17 Cal.4th 229, 246-247.)

Relevant factors include the details of the interrogation, the minor’s age, mental and physical condition at the time of the questioning, education, intelligence, experience and familiarity with the police. (*People v. Lara* (1967) 67 Cal.2d 365, 376-377.) On appeal, the reviewing court accepts the trial court’s resolution of disputed facts and its credibility evaluations if they are supported by substantial evidence. (*People v. Cortes* (1999) 71 Cal.App.4th 62, 70.) This court, however, independently determines whether, from the undisputed facts and those facts properly found by the trial court, the challenged statements were illegally obtained. (*People v. Whitson, supra*, 17 Cal.4th at p. 248.)

Analysis

Our task is to determine whether the statement was voluntary, based on the totality of the circumstances, not on any one particular fact. (See *People v. Williams* (1997) 16 Cal.4th 635, 660-661; see also *Arizona v. Fulminante* (1991) 499 U.S. 279, 285-286.) We will address, and reject, each point Byrd raises as part of the totality of the circumstances showing that statements were not voluntary.

First, Byrd maintains the lack of voluntariness is demonstrated by the fact the detectives failed to advise him of his right under Welfare and Institutions Code section 627 to phone his parents and an attorney. Granted, the evidence does not reflect that this was done. This statutory factor, however, is not sufficient to find that a statement is involuntary. (*People v. Maestas* (1987) 194 Cal.App.3d 1499, 1508 [holding police are not under a duty to advise a minor of his right to talk with his parents before interrogating the minor]; see also *People v. Lara, supra*, 67 Cal.2d at p. 383 [holding minor capable of making voluntary confession without the presence or consent of counsel or other adult].)

Second, Byrd claims the detectives used deceptive practices to coerce him to confess, but the only allegedly deceptive practice he identifies is being told by police that “Nothing’s going to help you but the truth” and that police would help him if he told the truth. Assuming for the sake of argument that the detectives’ comments could be viewed as deceptive, police deception “does not necessarily invalidate an incriminating statement.” (*People v. Maury* (2003) 30 Cal.4th 342, 411.)

“Police trickery that occurs in the process of a criminal interrogation does not, by itself, render a confession involuntary and violate the state or federal due process clause. [Citation.] Why? Because subterfuge is not necessarily coercive in nature. [Citation.] And unless the police engage in conduct which coerces a suspect into confessing, no finding of involuntariness can be made. [Citations.] [¶] *So long as a police officer’s misrepresentations or omissions are not of a kind likely to produce a false confession, confessions prompted by deception are admissible in evidence.*

[Citations.] Police officers are thus at liberty to utilize deceptive stratagems to trick a guilty person into confessing. The cases from California and federal courts validating such tactics are legion. [Citations.]” (*People v. Chutan* (1999) 72 Cal. App.4th 1276, 1280-1281, italics added.)

The detectives’ remarks were not designed to elicit a false confession; the detectives’ remarks were designed to elicit the truth. Admonitions to tell the truth do not amount to coercion and statements that one is better off telling the truth do not amount to improper promises of leniency. (*People v. Seaton* (1983) 146 Cal.App.3d 67, 74.)

Third, Byrd contends the totality of the circumstances show he was coerced into making a statement: his youth, his mental state, and the deceptive comments from the detectives. The questioning of Byrd took at most 49 minutes; from 10:01 p.m. to 10:50 p.m. The record discloses that the time of the questioning was not unusually late and the length of the questioning was not unusually long. Byrd was offered refreshments during that time.

Although Byrd’s youth is a factor, his age did not preclude him from understanding and being capable of waiving his rights. (*In re Charles P.* (1982) 134 Cal.App.3d 768, 772; *In re Brian W.* (1981) 125 Cal.App.3d 590, 603.) In addition, Byrd’s lengthy involvement with the criminal system, including four arrests prior to his arrest for Upshaw’s murder, would indicate that Byrd’s waiver was knowing and voluntary. (*People v. Lewis* (2001) 26 Cal.4th 334, 384.)

As for Byrd’s mental status, several experts disagreed with Howsepian’s conclusions. The trial court, in its role as a fact finder, was capable of deciding which competing experts are the more convincing. (See generally *People v. Seaton* (2001) 26 Cal.4th 598, 648 [“the jury is capable of deciding which of the competing experts is the more convincing”].)

The comments from the detectives urging Byrd to tell the truth and that police would help him if he told the truth, as discussed above, do not constitute coercion. (*People v. Seaton, supra*, 146 Cal.App.3d at p. 74.)

The case of *People v. Lessie*, *supra*, 47 Cal.4th 1152, cited by the trial court, is instructive. In *Lessie*, a 16-year-old who had completed the 10th grade, was tried as an adult and found guilty of second degree murder. (*Id.* at pp. 1157, 1169.) The defendant in *Lessie* had been arrested twice before his arrest for murder. (*Id.* at p. 1169.) After being arrested for murder, the 16-year-old waived his rights and agreed to speak with the police; but at one point asked to call his father. (*Ibid.*) Police continued questioning the youth, rather than allowing him to call his father, which was a violation of section 627 of the Welfare and Institutions Code. (*People v. Lessie*, *supra*, at pp. 1169-1170.) In reviewing the totality of the circumstances, the California Supreme Court concluded the youth had knowingly and voluntarily waived his Fifth Amendment privilege under the federal Constitution. (*Id.* at p. 1170.)

Conclusion

Upon independent review of the totality of the circumstances, we agree with the trial court that Byrd's statement to the detectives was voluntary. (*People v. Massie* (1998) 19 Cal.4th 550, 576.) Having reached this conclusion, we need not address Byrd's prejudice argument.

DISPOSITION

The judgment is affirmed.

Kane, J.

WE CONCUR:

Wiseman, Acting P.J.

Poochigian, J.