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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

MIGUEL ANGEL SANDOVAL,

Defendant and Appellant.

G047314

(Super. Ct. No. 10CF2436)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County,
Richard M. King, Judge. Affirmed.

Richard Schwartzberg, 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, Steve Oetting and
Michael Pulos, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

INTRODUCTION

In September 2010, defendant Miguel Angel Sandoval drove a large sport utility vehicle (SUV) onto a sidewalk and collided with several pedestrians, causing many serious injuries. Sandoval's blood alcohol level was over twice the legal limit.

Sandoval appeals after a jury found him guilty of one count of driving under the influence and causing bodily injury, one count of driving with a blood alcohol level above the legal limit and causing bodily injury, and two counts of mayhem. The jury also found several enhancement allegations true. Sandoval solely argues the trial court erred by denying his motion to suppress statements he made to a police officer before he was read his rights under *Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*).

We affirm. For the reasons we will explain, Sandoval was not in custody at the time he made the statements at issue; therefore, *Miranda* did not apply.

BACKGROUND

Sandoval was charged in an information with one count of driving under the influence and causing bodily injury, in violation of Vehicle Code section 23153, subdivision (a) (count 1); one count of driving with a blood alcohol level of 0.08 percent or more and causing bodily injury, in violation of Vehicle Code section 23153, subdivision (b) (count 2); and two counts of mayhem, in violation of Penal Code section 203 (counts 3 and 4).

The information alleged as to count 1, pursuant to Penal Code section 1203, subdivision (e)(4), that Sandoval had suffered two prior felony convictions (both for second degree burglary in violation of Penal Code sections 459 and 460, subdivision (b)). As to counts 1 and 2, the information alleged, pursuant to Vehicle Code section 23558, that Sandoval, "in one instance of driving, proximately caused bodily injury and death to more than one victim." The information further alleged as to counts 1 and 2 that,

pursuant to Penal Code section 12022.7, subdivisions (a) and (d), and within the meaning of Penal Code sections 1192.7 and 667.5, Sandoval personally inflicted great bodily injury on three victims, including one victim who was a child under the age of five.

The jury found Sandoval guilty on all counts and found all the enhancement allegations true, except for the allegation that under Penal Code section 12022.7, subdivision (a), Sandoval caused great bodily injury to one of the victims as it applied to counts 1 and 2. The trial court imposed a total prison sentence of 15 years. Sandoval appealed.

DISCUSSION

Sandoval contends the trial court denied him his rights under the Fifth Amendment to the United States Constitution by admitting into evidence the statements he made at the scene. Defendant argues his statements should not have been admitted into evidence because they were made during an in-custody interrogation and he had not been advised of his rights under *Miranda, supra*, 384 U.S. 436. For the reasons we will explain, Sandoval’s argument is without merit because he was not in custody at the time his statements were made.

I.

GOVERNING LEGAL PRINCIPLES

“*Miranda* warnings are required only where there has been such a restriction on a person’s freedom as to render him ‘in custody.’” (*Oregon v. Mathiason* (1977) 429 U.S. 492, 495; *People v. Ochoa* (1998) 19 Cal.4th 353, 401 [“Absent ‘custodial interrogation,’ *Miranda* simply does not come into play”].) “An interrogation is custodial when ‘a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.’ [Citation.] Whether a person is in custody is an objective test; *the pertinent inquiry is whether there was* “‘a “formal arrest or

restraint on freedom of movement” of the degree associated with a formal arrest.’”’
[Citation.] ¶ Whether a defendant was in custody for *Miranda* purposes is a mixed question of law and fact. [Citation.] When reviewing a trial court’s determination that a defendant did not undergo custodial interrogation, an appellate court must ‘apply a deferential substantial evidence standard’ [citation] to the trial court’s factual findings regarding the circumstances surrounding the interrogation, and it must independently decide whether, given those circumstances, ‘a reasonable person in [the] defendant’s position would have felt free to end the questioning and leave’ [citation].” (*People v. Leonard* (2007) 40 Cal.4th 1370, 1400, italics added; see *People v. Ochoa*, *supra*, at p. 402 [“Once the scene is . . . reconstructed, the court must apply an objective test to resolve “the ultimate inquiry”: “[was] there a ‘formal arrest or restraint on freedom of movement’ of the degree associated with a formal arrest””].)

In determining whether a defendant was in custody for purposes of *Miranda*, “[t]he totality of the circumstances surrounding an incident must be considered as a whole. [Citation.] Although no one factor is controlling, the following circumstances should be considered: ‘(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.) “Additional factors are whether 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.” (*Id.* at pp. 1403-1404.)

II.

PEOPLE V. THOMAS (2011) 51 CAL.4TH 449

In *People v. Thomas* (2011) 51 Cal.4th 449, 476-478 (*Thomas*), the California Supreme Court analyzed the circumstances surrounding statements made by the defendant in response to questioning by a police officer after the defendant had been detained in a patrol car. The Supreme Court concluded those statements were admissible, notwithstanding *Miranda*, because the defendant had not been in custody at the time the statements were made. (*Thomas, supra*, at p. 478.) In *Thomas*, police officers were dispatched to a murder scene at a high school and were informed the defendant had discovered the victim's body, blood had been found in a bathroom, and the defendant had been seen washing his hands in that bathroom. (*Id.* at p. 475.) One officer asked the defendant to accompany him to his patrol vehicle, explaining that the defendant "was a witness in this crime" and that, in light of the severity of the crime, detectives, who were en route, would likely be handling the interviews of the primary witnesses and thus he would be detained. (*Id.* at p. 476.)

The defendant agreed with the officer's request and was placed in the backseat of the patrol car. (*Thomas, supra*, 51 Cal.4th at p. 476.) The defendant was neither searched nor handcuffed. (*Ibid.*) The rear doors of the patrol car could not be opened from the inside. (*Ibid.*)

About 20 minutes after the defendant had been placed in the patrol car, another officer let the defendant out of the patrol car, and asked him to come to the rear of the car. (*Thomas, supra*, 51 Cal.4th at p. 476.) The officer asked the defendant what had happened that day. (*Ibid.*) The defendant responded, "I am a convict. I won't go to court about this." (*Ibid.*)

The officer explained to the defendant that he was not there to discuss whether the defendant would go to court, but to learn what had happened. (*Thomas*,

supra, 51 Cal.4th at p. 476.) The defendant repeated that he did not want to go to court to testify. (*Ibid.*) He said he was a substitute janitor and had worked at the school for a few days. (*Ibid.*) He said that after he had discovered the victim's body, he notified two other janitors who told the principal about his discovery. (*Ibid.*) During the interview, the defendant pointed out that he had blood on himself. (*Ibid.*) The officer spoke to the defendant for 20 to 30 minutes, during which time an investigator collected a shirt that the defendant had in his back pocket. (*Ibid.*)

The defendant argued the trial court erred by denying his motion to suppress evidence of his statements because he had been in custody when he made the statements without having been advised of his *Miranda* rights. (*Thomas, supra*, 51 Cal.4th at p. 475.) The defendant argued he was in custody for purposes of *Miranda* when he was detained in the patrol car. (*Thomas, supra*, at p. 477.)

The Supreme Court rejected the defendant's argument, holding that the motion to suppress was properly denied because the defendant was not in custody for purposes of *Miranda* when he was questioned. (*Thomas, supra*, 51 Cal.4th at p. 478.) The Supreme Court explained: "[W]e need not decide whether defendant was in custody when he was in the backseat of the patrol car, because he was not questioned during that time. Even were we to conclude that defendant was in custody when he was detained in the patrol car, it does not necessarily follow that he remained in custody when he was released from the vehicle before he was interviewed." (*Id.* at pp. 477-478, citing *People v. Holloway* (2004) 33 Cal.4th 96, 120 [*Miranda* warnings were not required because the defendant had not been in custody at the time he was questioned even though he had been handcuffed before the questioning]; *In re Joseph R.* (1998) 65 Cal.App.4th 954, 957-958 [the defendant was not in custody when questioned although he had previously been placed in handcuffs and detained in a patrol vehicle].)

III.

SUMMARY OF EVIDENCE CODE SECTION 402 HEARING ON SANDOVAL'S MOTION TO SUPPRESS

Before trial, Sandoval moved to exclude “any and all extrajudicial statements” he made “to any law enforcement agent concerning any aspect of the charges or the issue.” The trial court held an Evidence Code section 402 hearing at which Santa Ana Police Officers Joseph Hamlin and Duane Greaver testified; a summary of their testimony is as follows.

On September 6, 2010, at 7:46 p.m., Hamlin was dispatched to the scene of a traffic collision that occurred at an intersection in Santa Ana. When he arrived, he saw an SUV that had collided with the corner of the intersection. An officer who was already on the scene directed Hamlin to detain the occupant of the SUV. Hamlin found the SUV solely occupied by Sandoval, who was sitting in the front passenger seat. Hamlin testified that he might have initially asked Sandoval if he was okay or needed medical attention. Hamlin asked Sandoval to get out of the SUV; Hamlin did not suggest he would use force if Sandoval was uncooperative.

Sandoval could not get out of the SUV through the passenger side door because it was stuck. Sandoval exited the SUV through the driver's side door. Hamlin observed Sandoval to have slurred speech and “smelled the odor of [an] alcoholic beverage emitting from his breath and person.”

Hamlin placed Sandoval in the backseat of a patrol car that was 20 feet away. Hamlin closed the door of the patrol car; Sandoval would have been unable to open the door from the inside to exit. Sandoval was not handcuffed or otherwise restrained by Hamlin, except that Hamlin stated he had “some type of a hold” on Sandoval as they walked to the patrol car. Hamlin did not have his gun drawn or in any way threaten Sandoval. Hamlin did not tell Sandoval he was under arrest, going to jail,

or “not getting out of here.” Hamlin did not observe anyone having a conversation with Sandoval before Greaver arrived.

Greaver arrived on the scene three minutes after Hamlin. Greaver testified that “[i]t was a pretty big scene”; he saw fire trucks and people being transported by ambulance. Greaver was directed by an officer to conduct a driving under the influence investigation of the driver of the SUV.

Greaver went to the patrol car in which Sandoval was seated in the backseat. Greaver opened the door, told Sandoval who he was, and explained he was there to conduct an investigation to determine whether Sandoval was under the influence of alcohol. Sandoval responded, “fine. I know how this shit works.” Greaver asked Sandoval to get out of the car and directed him to walk across the street to a sidewalk, away from the scene of the collision. Sandoval got out of the patrol car and walked “freely of his own accord” to the sidewalk although Greaver held Sandoval’s left arm and walked next to him to keep him from falling because he appeared to be “unstable” on his feet. Sandoval was not handcuffed or otherwise restrained. Another officer was standing by for the purpose of the “officer safety issue.” Neither Greaver nor the other officer had a gun drawn or exhibited a baton or pepper spray.

After arriving at the sidewalk, Greaver asked Sandoval questions about what and how much he had to drink, where he had been drinking, and whether he had been driving. While Greaver had been directing Sandoval to the sidewalk, they were not surrounded by the officers who had responded to the scene. Sandoval told Greaver he had consumed five 24-ounce Tecate beers.

Greaver asked Sandoval where he had been driving from and where he had been going. Sandoval said he was driving home from a friend’s house. When asked if he had been driving, Sandoval replied, “yes.” When asked about how he crashed, Sandoval answered, “I don’t know.” Greaver directed him to the SUV, and Sandoval stated, “oh, no, I didn’t crash.” He also said that he did not know anything about a crash and that he

had not been driving. Greaver asked Sandoval who had been driving. Sandoval took a moment and then stated his niece had been driving. Greaver asked Sandoval who his niece was. Sandoval said, "I couldn't tell you." When Sandoval was asked to perform the one-leg stand test and was unable do it because he was "almost falling," he stated, "I'm fucked up. Just take me in," and declined to submit to further tests. Greaver placed Sandoval under arrest, handcuffed him, and placed him in a patrol car.

IV.

THE TRIAL COURT DID NOT ERR BY DENYING SANDOVAL'S MOTION TO SUPPRESS BECAUSE SANDOVAL DID NOT MAKE ANY STATEMENTS WHILE IN CUSTODY.

The trial court found Sandoval's statements at the scene of the collision were admissible, and explained its ruling as follows: "The court does conclude that the defendant was not in custody or its functional equivalent. [¶] The court is impressed by the defendant's action with respect to the first officer in terms of getting out of the car and going to the second car in terms of what transpired. All that was was escorting the defendant. No guns were drawn. There was no evidence exhibited by the defendant that he felt that he was in custody. [¶] Furthermore, the court does find by a preponderance of the evidence that the *Miranda* warnings are not required in this case, as I indicated before, because the defendant was not in custody or its functional equivalent. [¶] Furthermore, the court has drawn the inference that it was the defendant's desire to speak to both officers. [¶] Again, the court finds by [a] preponderance of the evidence that the people have met their burden on voluntariness. So the statements are admissible."

The trial court did not err by concluding that Sandoval was not "in custody" for purposes of *Miranda* at the time he made the statements he sought to suppress. Following the collision, Hamlin asked Sandoval to get out of the SUV and walk 20 feet to a patrol car where Sandoval was placed in the backseat. At no time did Hamlin tell

Sandoval he was under arrest or going to jail, place Sandoval in handcuffs, display any weapon, or threaten Sandoval with force if he were uncooperative. Hamlin did not question Sandoval, much less do so in an aggressive, confrontational, or accusatory manner. Although Hamlin had some type of hold on Sandoval as they walked from the SUV to the patrol car, there is no evidence the hold was of a nature that a reasonable person in Sandoval's position would not have "felt free to end the questioning and leave." (*People v. Leonard, supra*, 40 Cal.4th at p. 1400.) On the other hand, there was evidence that Sandoval needed assistance to prevent him from falling down because of his level of intoxication. Sandoval does not contend he was interrogated by Hamlin, for purposes of *Miranda*.

Even assuming Sandoval, while detained in the backseat of the patrol car, had been in custody for purposes of *Miranda*, "it does not necessarily follow that he remained in custody when he was released from the vehicle before he was interviewed" by Greaver. (*Thomas, supra*, 51 Cal.4th at p. 477.) Sandoval was seated in the backseat of a patrol car, without being in handcuffs, for no more than a few minutes before Greaver opened the door of the car, identified himself, and informed Sandoval that he would be conducting an investigation to determine whether Sandoval was under the influence of alcohol. Greaver asked Sandoval to get out of the car and walk across the street to the sidewalk, away from the hectic scene of the collision. Sandoval walked "freely of his own accord," while Greaver held his arm to keep Sandoval from falling. Greaver did not have his gun drawn or exhibit any other weapon. Although there were several officers and emergency personnel attending to victims of the crash, there was only one other officer in the immediate vicinity of Sandoval when Greaver conducted his driving under the influence investigation; that officer did not display any weapon or threaten the use of force toward Sandoval.

Greaver's investigation consisted of asking Sandoval a few questions about who had been driving the SUV at the time of the collision, where he had been and where

he was going when the collision occurred, whether he had been drinking and, if so, how much. No evidence suggests Greaver conducted his investigation in an aggressive, confrontational, or accusatory manner. Greaver's investigation ended after Sandoval had difficulty performing a one-leg stand test and volunteered, "I'm fucked up. Just take me in," and refused to submit to further tests. At that time, Sandoval was taken into custody, arrested, handcuffed, and placed in a patrol car.

Sandoval argues this case is almost "identical" to *People v. Bejasa* (2012) 205 Cal.App.4th 26, 30-31 (*Bejasa*), in which the appellate court held the trial court erred by admitting into evidence the defendant's "custodial statements to the police" made before the defendant was advised of his rights under *Miranda*. *Bejasa* is factually distinguishable from the instant case in a number of material respects.

In *Bejasa, supra*, 205 Cal.App.4th at page 32, the defendant was contacted by a police officer, following a head-on collision that occurred after the defendant drove his car into oncoming traffic. Upon initial contact with the first police officer who arrived on the scene, the defendant volunteered that he was on parole and consented to a search. (*Ibid.*) The officer found the defendant had two syringes in his possession, one of which contained a substance that was later determined to be methamphetamine. (*Id.* at pp. 32-33.) The defendant admitted the syringe was used to "shoot up methamphetamine." (*Id.* at p. 33.) At that point, the officer placed handcuffs on the defendant, seated him in the back of a patrol car, and informed him that "he was being detained for a possible parole violation." (*Ibid.*) A few minutes later, a second officer allowed the defendant to get out of the patrol car and removed his handcuffs before interviewing him and administering field sobriety tests. (*Ibid.*)

The appellate court concluded the defendant was in custody for purposes of *Miranda* when he was interviewed by the second officer and submitted to the field sobriety tests. (*Bejasa, supra*, 205 Cal.App.4th at pp. 31, 38-39.) The court explained that while some facts "offer some support for the trial court's determination that

defendant was not in custody, other circumstances lend great weight to the argument that a reasonable person would have felt restrained in a manner normally associated with formal arrest.” (*Id.* at p. 37.) The court stated, “[f]irst, prior to being restrained, defendant had incriminated himself in a number of ways.” The court further stated, “Second, the fact that [the first officer] advised defendant he was being ‘detained for a possible parole violation’ also weighs in favor of custody” in light of the defendant’s admission that he was on parole and had been using and carrying methamphetamine. (*Ibid.*) The court explained: “In this context, a reasonable person would understand the officer’s statement to mean that he or she was not free to leave.” (*Ibid.*)

The appellate court in *Bejasa, supra*, 205 Cal.App.4th at page 37, further explained, “[e]ven if the above circumstances are insufficient to constitute a level of restraint comparable to formal arrest, the physical restraint that followed crosses that boundary. Defendant was confronted with two of the most unmistakable indicia of arrest: he was handcuffed and placed in the back of a police car. A reasonable person, under these circumstances, would feel restrained to a “‘degree associated with formal arrest.’”” The court held that “although defendant was released from the police car and the handcuffs removed by the time [the second officer] questioned him, defendant remained in custody for purposes of *Miranda*. The removal of the restraints was not enough to ameliorate the custodial pressures that likely remained from the initial confinement. Furthermore, defendant was released from the police car only after numerous officers had arrived at the scene. The ratio of officers to suspect had increased to at least seven to one, thus increasing the custodial pressure on defendant.” (*Id.* at pp. 38-39.)

Unlike the circumstances in *Bejasa*, before Sandoval made the statements he sought to suppress at trial, he (1) had not told any officer he was on parole; (2) was not searched; (3) was not found in possession of drug paraphernalia, and thus had not admitted that any such drug paraphernalia was used for methamphetamine; and (4) was never placed in handcuffs. Although Sandoval was placed in the backseat of a patrol car

for a few minutes, as discussed *ante*, that fact alone does not establish he was in custody for purposes of *Miranda* after he was allowed to get out of the patrol car and walk over to a sidewalk, before making the statements he sought to suppress. (See *Thomas, supra*, 51 Cal.4th at pp. 477-478.) Even though there were several officers at the scene, only two were near Sandoval when he made the statements he sought to be suppressed.

DISPOSITION

The judgment is affirmed.

FYBEL, J.

WE CONCUR:

MOORE, ACTING P. J.

THOMPSON, J.