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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.

KRISTOPHER BRYAN FORD,

Defendant and Appellant.

G051004

(Super. Ct. No. 13NF1872)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, David A. Hoffer, Judge. Affirmed.

Mark Alan Hart, 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, A. Natasha Cortina, Annie Featherman Fraser, and Parag Agrawal, Deputy Attorneys General, for Plaintiff and Respondent.

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A jury convicted Kristopher Bryan Ford (born May 1979) of an attempted lewd act on a child under age 14 (Pen. Code, §§ 288, subd. (a), 664 [count 1, victim J.C.]; all statutory references are to the Penal Code unless noted), committing a lewd act on a child under age 14 (§ 288, subd. (a) [counts 2 and 4, victim J.C.; counts 5 and 6, victim Joshua H.; count 7, victim Brandon A.], aggravated sexual assault on a child under age 14 (§ 269, subd. (a)(3) [count 3, victim J.C.]), and committing a lewd act on a child age 14 or 15 (§ 288, subd. (c)(1) [count 8, victim Brandon A.]). The jury found Ford committed offenses specified in section 667.61, subdivision (c), against more than one victim (§ 667.61, subd. (b), (e)(4) [as to counts 2, 4-7]), and substantial sexual conduct occurred (§ 1203.066, subd. (a)(8) [as to count 4]). Ford contends the trial court violated his *Miranda* rights (*Miranda v. Arizona* (1966) 384 U.S. 436), by admitting into evidence a handwritten statement he provided to a law enforcement officer at the time of his arrest, even though he indicated on the form he did not want to talk about what happened. Because there was substantial evidence Ford did not invoke his right to silence before he wrote the statement, and because any conceivable error was harmless, we affirm the judgment.

## I

### FACTUAL AND PROCEDURAL BACKGROUND

At Ford's trial in September 2014, the prosecution presented evidence Ford committed sexual offenses against three minor boys, J.C., Brandon A., and Joshua H., whose families he met and befriended through church. Ford testified and denied committing the offenses. As noted above, the jury convicted Ford of the charged offenses and found the special allegations to be true. Ford does not challenge the sufficiency of the evidence to support the convictions and findings, so we need not relate the evidence introduced at trial. At the sentencing hearing in October 2014, the trial court imposed a term of 33 years to life in prison.

## II

### DISCUSSION

#### *The Trial Court Did Not Err in Finding No Miranda Violation*

Ford admitted to sexually molesting J.C. in a handwritten statement on a form given to him by the arresting officer. On the same form Ford declined to talk about the incident. Ford contends the trial court should have excluded his handwritten confession because he invoked on the form his Fifth Amendment right to silence when he declined to “talk” about the incident. But the evidence did not show whether Ford asserted his right to silence before or after his written confession. It is also unclear whether Ford’s decision not to “talk” about the incident referred only to oral communication or whether Ford intended his assertion to include written statements. Faced with this ambiguity, the trial court concluded Ford reduced his oral admissions to writing and then declined to orally discuss the matter further. Because substantial evidence supports the court’s conclusion, we reject Ford’s challenge.

At a pretrial hearing (Evid. Code, § 402), Los Angeles County Deputy Sheriff Daniel Hoyos testified he and his partner, Deputy Legazpi, responded on June 4, 2013, to the Compton apartment where J.C. lived with his family. Family members were “really agitated” at Ford, so Hoyos escorted Ford outside toward his patrol vehicle to separate him from the others. As they walked, Ford volunteered, “Man, I messed up, and I shouldn’t have done that . . . .” Hoyos advised Ford of his rights using a *Miranda* card. Ford agreed to speak with him and “was real cooperative.” Ford told the officer what happened in a conversation lasting about five minutes.

After they spoke, Hoyos asked Ford if he could write down his statements on a piece of paper. Ford said “sure.” Hoyos gave Ford a two-page form (Exhibit 3) captioned ADMONITION AND WAIVER OF MIRANDA RIGHTS. The form has

English and Spanish sections. The form lists a variant of each *Miranda* advisement,<sup>1</sup> followed by “DO YOU UNDERSTAND?,” and the words “YES” or “NO.” The last question is “DO YOU WANT TO TALK ABOUT WHAT HAPPENED?” Hoyos gave Ford the form, a pen, and a clipboard, and left him alone in the back of the patrol car to write down the oral admissions he made to Hoyos. When Ford finished, Hoyos collected the form but did not review it and he did not question Ford further at the scene. Hoyos signed and dated the form, probably when Ford handed it to him, although he did not recall for certain. Hoyos signed below Ford’s signature, which was below the uncompleted Spanish section of the form, and above Ford’s written statement. Hoyos then arrested and handcuffed Ford and took him to the station for booking. When they arrived at the station, Hoyos asked Ford if “he wouldn’t mind saying what he wrote on video.” Ford agreed.<sup>2</sup> Later that evening, while he was writing up his report, Hoyos noticed for the first time Ford acknowledged on the form that he understood each right, but circled “NO” to the question, “Do you want to talk about what happened.” In a handwritten statement on the space provided, Ford admitted sexually molesting J.C.<sup>3</sup>

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<sup>1</sup> “(1) You have the right to remain silent. Do you understand? Yes No [¶] (2) Anything you say may be used against you in court. Do you understand? Yes No [¶] (3) You have the right to an attorney during questioning. Do you understand? Yes No [¶] (4) If you cannot afford an attorney, one will be appointed for you, before questioning. Do you understand? Yes No (5) Do you want to talk about what happened? Yes No.”

<sup>2</sup> The prosecutor stated he did not seek to admit the videotaped statement because Hoyos “should have been on notice” Ford might not want to talk after Hoyos received the form. The prosecutor later impeached Ford with the videotaped statement after he testified and denied the charged offenses.

<sup>3</sup> The statement provides: “I, Kristopher Ford, have sexually molested [J.C.] . . . when at a hotel, with him. He & I were talking about sexuality & he asked about masturbation & girls & sex. I explained some things to him & he ask what I meant. I told him that he had to use his imagination & that he could “thigh” instead of have sex with girls. I tried to explain to him it was a safer alternative to sex [indecipherable] as no penetration was necessary to prevent “mistakes.” Another time, he exclaimed to me that he had a 7” long member as if talking about his penis. I protested & jokingly said let me see. I reached at his groin and grabbed at it once. [¶] When thighing I put my bare penis

The trial court denied Ford's request to exclude his written statement, explaining it found Hoyos credible and that Hoyos signed the form after Ford had filled out the document. The court reasoned Ford might have circled "NO" because he already *talked* about what happened and now he was going to write it down, "In other words that's not talking. I could imagine someone just reading the question and saying no, I don't want to talk about it. I want to write about it. And I already talked about it to the officer. . . . So . . . the defendant wasn't invoking . . . his right to remain silent at all but was simply indicating he didn't want to talk about it because he already had . . . ." The court stated there was no way to know whether Ford wrote his narrative before or after he circled "NO" to the question asking whether he would talk about the incident. The court reasoned if Ford "did invoke his right to remain silent," the "written statement is then a spontaneous statement" "by somebody who knew they had the right to remain silent" because Ford acknowledged on the form he understood his right to remain silent, and Hoyos had previously advised Ford of his rights orally. The court noted if Ford wrote out the statement before he filled out the rights section of the form, "the fact [he] was advised of his rights orally before permits this written statement" because he "had already waived his rights," and "then he could fill out the top portion and say he does not want to talk about it anymore. He's already talked about it. He's already written about it, so if that's an invocation, it would apply only to statements made after . . . ." <sup>4</sup>

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on his bare thigh thrusting to simulate having sex. He's also thighed me a few times. [¶] I know I was inappropriate & against the law. I wanted to turn myself in. I felt horrible & disgusted w/myself & tried to be distant from them to get better & keep from engaging w/him. Mostly we talked & he would tell me what he wanted trusting that he would have someone to turn to."

<sup>4</sup> We agree with Ford his written statement was the product of deliberate reflection about past events and therefore not "spontaneous," as the trial court described. But we do not agree the court's description requires reversal. In context, the court's use of this term referred to the voluntary nature of Ford's written statement.

*Miranda, supra*, 384 U.S. 436, adopted prophylactic measures to protect a suspect's Fifth Amendment right from the compelling pressures of custodial interrogation. The prosecution may not use statements stemming from custodial interrogation unless, before questioning, the person is warned he has a right to remain silent, any statement he makes can be used as evidence against him, and he has a right to the presence of an attorney, either retained or appointed, before and during questioning. A person may waive these rights, but if he "indicates in any manner that he does not wish to be interrogated, the police may not question him" further. (*Id.* at pp. 444-445; see 2 LaFave et al., *Criminal Procedure* (4th ed 2015) Interrogation and Confessions, § 6.7(a), pp. 837-844 [interrogation under *Miranda* refers to express questioning and any words or actions on the part of the police reasonably likely to elicit an incriminating response].)

"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, the scope of our review is well established. 'We must accept the trial court's resolution of disputed facts and inferences, and its evaluations of credibility, if they are substantially supported. [Citations.] However, we must independently determine from the undisputed facts, and those properly found by the trial court, whether the challenged statement was illegally obtained.' [Citations.] We apply federal standards in reviewing defendant's claim that the challenged statements were elicited from him in violation of *Miranda*.'" (*People v. Bradford* (1997) 14 Cal.4th 1005, 1032-1033.)

Here, Hoyos initially provided oral *Miranda* advisements, and Ford waived his rights and spoke with the deputy. (See *Berghuis v. Thompkins* (2010) 560 U.S. 370 (*Berghuis*) [where *Miranda* warning given and understood by the accused, an uncoerced statement establishes an implied waiver of the right to remain silent].) Thereafter, Hoyos asked if Ford would write out his version of events, and Ford agreed. There was no direct evidence Ford invoked his right to remain silent before he wrote out his statement.

Given that Ford previously had provided oral admissions to Hoyos, and agreed to write down those admissions, the trial court reasonably could infer that Ford did not invoke his right to silence before he made his written admissions. Viewed in context, Ford simply did not want to *talk* anymore about the matter. (See *North Carolina v. Butler* (1979) 441 U.S. 369, 373 [oral statements admissible where suspect agreed to talk to police after refusing to sign a waiver of rights form].) A suspect must invoke his rights “unambiguously” and Ford did not do so here. (See *Berghuis, supra*, 560 U.S. at p. 371; *Davis v. United States* (1994) 512 U.S. 452, 459.) We discern no error in admitting the statement.

In any event, any error in admitting the handwritten statement was harmless beyond a reasonable doubt. (*Chapman v. California* (1967) 386 U.S. 18, 24; *People v. Cahill* (1993) 5 Cal.4th 478, 510.) Ford previously had waived his rights and provided an oral statement admitting he molested J.C., “thighing” him at a hotel in April 2012. (See *In re Joseph H.* (2015) 237 Cal.App.4th 517, 532 [defendant’s prior admissions rendered subsequent incriminating responses harmless].) Brandon and Joshua’s accounts corroborated J.C.’s testimony, the defense presented no evident motive for the youths to lie, and the testimonies of the three, coupled with Ford’s oral statement, provided overwhelming evidence of guilt apart from the admissions contained in Ford’s handwritten statement. Because Ford testified, and denied committing the charged offenses, the prosecution would have impeached Ford with his written statement even had the court excluded the statement. (*Harris v. New York* (1971) 401 U.S. 222 [statements inadmissible as affirmative evidence because of a failure to comply with *Miranda* may be used for impeachment to attack the credibility of a defendant’s trial testimony as long as statements not coerced or involuntary].) We decline to speculate whether or not Ford would have testified if the trial court had excluded Ford’s handwritten confession.

III

DISPOSITION

The judgment is affirmed.

ARONSON, J.

WE CONCUR:

O'LEARY, P. J.

THOMPSON, J.