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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

GONZALO CHAVEZ,

Defendant and Appellant.

2d Crim. No. B267559
(Super. Ct. No. 2014038311)
(Ventura County)

Gonzalo Chavez appeals a judgment following conviction of misdemeanor possession of methamphetamine, possession of methamphetamine with a firearm, and possession of a firearm by a felon, with findings that he served two prior prison terms. (Health & Saf. Code, §§ 11377, subd. (a), 11370.1, subd. (a); Pen. Code, §§ 29800, subd. (a)(1), 667.5, subd. (b).)[1] We decide that the trial court properly admitted evidence of Chavez's police interview statements, and affirm.

[1] All further statutory references are to the Penal Code unless stated otherwise.

FACTUAL AND PROCEDURAL HISTORY

In the early evening of December 16, 2014, Ventura County Sheriff's deputies served an arrest warrant on Danielle Bartek, a hotel guest at the Mariott Hotel in Newbury Park. Bartek referred to a white-colored pickup truck parked in the hotel parking lot and asked to speak with her friend Melissa, a passenger inside the truck.

Sheriff's Deputy Bill Meixner approached the truck and saw Chavez sitting in the driver's seat. Chavez had a "wide-eyed stare," spoke rapidly, and emanated an odor of alcohol. Despite the cool weather, Chavez perspired profusely. Through a records check, Meixner confirmed that Chavez was the registered owner of the truck.

Meixner asked Chavez to step outside. Meixner then tested Chavez's eyes for reaction to light and also checked his pulse. Following Meixner's evaluation, he concluded that Chavez was under the influence of a central nervous system stimulant, such as methamphetamine. Meixner arrested Chavez and placed him in the backseat of the patrol vehicle.

As Chavez watched, Meixner searched the truck. Meixner found Melissa Dibble lying under a blanket in the backseat and arrested her for being under the influence of a controlled substance. In a void at the base of the center console, Meixner discovered two baggies of methamphetamine and a digital scale. Inside a removable dashboard panel, he found a loaded and operable handgun. Three glass pipes and another baggie of methamphetamine lay on the passenger floorboard.

During a later police interview, Chavez admitted to ownership of the methamphetamine for his personal use and ownership of the handgun. Chavez's urine sample also tested

presumptively positive for the presence of amphetamine and marijuana.

Motion to Suppress Evidence of Chavez's Admissions

Prior to trial, Chavez moved to suppress evidence of his interview statements on grounds that they were involuntary due to his intoxication, and were made in violation of *Miranda v. Arizona* (1966) 384 U.S. 436 ("*Miranda*"). The trial court held an evidentiary hearing regarding the admissions and received Meixner's testimony and a partial transcript and the audiotape of the interview.[2]

At the hearing, Meixner described Chavez's profuse perspiration, rapid and rambling speech, eye reaction, and pulse rate. He described Chavez as initially appearing "panicked and fearful" but "defeated" following his arrest.

Meixner also described Chavez's response as he watched the truck search and contraband retrieval: "[Chavez] was in direct eyeshot and he was intently watching me while I was searching [the truck] and watched as I removed different items and placed them in the back of the truck with the tailgate down." As Meixner opened the door of the patrol vehicle to inquire if Chavez wanted the truck secured or towed, Chavez stated that "everything was his."

At the inception of the police station interview, Meixner advised Chavez of his *Miranda* rights and asked if he would talk "about what happened." Chavez shook his head from side to side indicating no, and stated: "I have nothing to say." Meixner responded: "You got nothing to say? Alright. So it's just like that? [Y]our lady has got no criminal history, man." Chavez

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[2] We have reviewed the partial transcript and the audiotape which have been transmitted to this court as exhibits.

responded by asking what Meixner was "trying to say." When Meixner replied that Dibble would "go down" for all the charges, Chavez replied: "Put it on me then," and later, "It's all me, man," and "[I]t's my drugs and everything."

Meixner testified that he construed "I have nothing to say" as "[Y]ou got me. . . . I have nothing else to say," based upon Chavez's change of demeanor and admissions made in the patrol vehicle after Meixner retrieved the contraband from Chavez's truck.

Following argument by the parties, the trial court denied the suppression motion. In part, the court stated that Chavez's "no" gesture was "pretty darn close to an invocation of the right to silence" but was "ambiguous" in context. The court acknowledged listening to the audiotape and stated "it did come off . . . the way [Meixner] took it."

Conviction and Sentencing

The jury convicted Chavez of misdemeanor possession of methamphetamine (count 1), possession of methamphetamine with a firearm (count 2), and possession of a firearm by a felon (count 3). (Health & Saf. Code, §§ 11377, subd. (a), 11370.1, subd. (a); § 29800, subd. (a)(1).) In a separate proceeding, the trial court found that Chavez served two prior prison terms within the meaning of section 667.5, subdivision (b).

The trial court sentenced Chavez to a five-year prison term for count 2, including two years for the prior prison term enhancements. It imposed a concurrent 365-day term for count 1 and imposed but stayed sentence for count 3 pursuant to section 654. The court also imposed a $500 restitution fine, a $500 parole revocation restitution fine (suspended), a $160 court security assessment, and a $120 criminal conviction assessment.

(§§ 1202.4, subd. (b), 1202.45, 1465.8, subd. (a); Gov. Code, § 70373.) It awarded Chavez 476 days of presentence custody credit.

Chavez appeals and contends that the trial court erred by admitting evidence of his police interview admissions in violation of *Miranda*, *supra*, 384 U.S. 436.

DISCUSSION

Chavez argues that the trial court erred by admitting evidence of his statements after he unambiguously invoked his right to silence. He asserts that the ruling is contrary to our decision in *People v. Carey* (1986) 183 Cal.App.3d 99, 105 ["[H]ow many times must a defendant exclaim, 'I ain't got nothin' to say' to invoke his privilege to remain silent?"].

If a suspect indicates in any manner during a custodial interrogation that he wishes to remain silent, the interrogation must cease. (*Miranda*, *supra*, 384 U.S. 436, 473-474; *People v. Bacon* (2010) 50 Cal.4th 1082, 1105; *People v. Musselwhite* (1998) 17 Cal.4th 1216, 1238.) A suspect's invocation of his right to silence must be "unambiguous and unequivocal." (*People v. Nelson* (2012) 53 Cal.4th 367, 377.) Whether a defendant has invoked his right to remain silent is a factual question that is determined in view of all the circumstances. (*Musselwhite*, at p. 1238 [suspect's desire to halt interrogation may be indicated in a variety of ways but the words used must be construed in context].)

In reviewing the trial court's *Miranda* ruling, we accept the court's credibility assessments and resolution of disputed facts that are supported by substantial evidence. (*People v. Bacon*, *supra*, 50 Cal.4th 1082, 1105; *People v. Shamblin* (2015) 236 Cal.App.4th 1, 19.) We independently

review, however, whether the challenged statements were ambiguous, unequivocal, or obtained in violation of the defendant's *Miranda* rights. (*Ibid.*) Nevertheless, we give great weight to the considered conclusions of the court that has previously reviewed the same evidence. (*People v. Whitson* (1998) 17 Cal.4th 229, 248; *People v. Jennings* (1988) 46 Cal.3d 963, 979.)

As our Supreme Court stated in *People v. Musselwhite, supra*, 17 Cal.4th 1216, 1239-1240, "There are a number of cases in which this court and the Court of Appeal have reviewed the findings of the trial court that what is claimed, post hoc, to be a suspect's attempt to invoke his *Miranda* right to remain silent and cut off further questioning is something less or other than that." *Musselwhite* cited *People v. Jennings*, *supra*, 46 Cal.3d 963, 977-978 [defendant's statement insisting, "'I'm not going to talk. . . . That's it, I shut up'" reflected "only momentary frustration and animosity" toward one officer and was not an invocation of the right to remain silent]; *In re Joe R.* (1980) 27 Cal.3d 496, 516 [in context, defendant's statement, "'That's all I got to say'" or "'That's all I want to tell you'" did not amount to assertion of the right to remain silent]; *People v. Silva* (1988) 45 Cal.3d 604, 629 [defendant's statement, "'I really don't want to talk about that'" did not amount to an invocation of the right to remain silent].)

The trial court did not err by permitting evidence of Chavez's interview statements because he did not unambiguously invoke his right to remain silent in view of the statements' context. (*People v. Jennings*, *supra*, 46 Cal.3d 963, 978.) Meixner testified that Chavez appeared defeated after he saw Meixner retrieve the contraband from the truck; Chavez then admitted

that the contraband was his when Meixner opened the door to the patrol vehicle. Meixner testified that he construed Chavez's interview statement, "I have nothing to say," as "[Y]ou got me. . . I have nothing else to say." The court also listened to the audiotape and agreed with Meixner's interpretation. (*People v. Whitson*, *supra*, 17 Cal.4th 229, 248 [we give "great weight" to the trial court's considered conclusions based on the evidence].)

People v. Carey, *supra*, 183 Cal.App.3d 99, is distinguishable. There, after a detective advised the defendant of his *Miranda* rights and asked whether he wanted to talk, the defendant unequivocally asserted, "'I ain't got nothin' to say.'" (*Id.* at p. 103.) The detective continued to ask three more times if the defendant would answer some questions, and he responded three more times, "I ain't got nothing to say." (*Id.* at pp. 103-104.) Ultimately, however, the defendant confessed to committing the charged crimes. Rejecting the contention that the detective was merely attempting to clarify the defendant's intentions, we found it "difficult, if not impossible, to square appellant's emphatic unwillingness to say anything with other than an invocation of the right to remain silent." (*Id.* at p. 104.) We also noted that "were we to sanction the police procedures here challenged, the 'clarification' exception would swallow the *Miranda* rule." (*Ibid.*)

In any event, admission of Chavez's interview statements was harmless beyond a reasonable doubt. (*Arizona v. Fulminante* (1991) 499 U.S. 279, 309 [admission of involuntary confession subject to harmless error analysis]; *People v. Cahill* (1993) 5 Cal.4th 478, 510.) Chavez admitted and Meixner confirmed that Chavez was the registered owner of the truck. When approached by Meixner, Chavez sat in the driver's seat

near the location of the methamphetamine, digital scale, and handgun. The handgun was hidden behind a "loose" cup holder panel. Dibble, the other occupant of the truck, lay in the backseat under a blanket. Given the evidence presented, the jury verdict was "surely unattributable" to Chavez's admissions. (*People v. Neal* (2003) 31 Cal.4th 63, 87 [statement of general rule].)

The judgment is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

YEGAN, J.

TANGEMAN, J.

Matthew P. Guasco, Judge

Superior Court County of Ventura

Mark R. Feeser, under appointment by the Court of Appeal, for Defendant and Appellant.

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