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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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. ROSALBA CRUZ MORAN, Defendant and Appellant.	2d Crim. No. B271955 (Super. Ct. No. 2012044479) (Ventura County)

Rosalba Cruz Moran appeals her conviction of the first degree murder of her newborn, biological son. (Pen. Code, §§ 187, 189.)[1] She was sentenced by the trial court to a term of 25 years to life in state prison. Appellant contends the trial court erred when it admitted the statements she made to law enforcement because she received incomplete and confusing *Miranda* (*Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*)) warnings

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

and did not knowingly and intelligently waive her right against self incrimination. Appellant further contends there is no substantial evidence she acted with premeditation and deliberation. Finally, she requests a limited sentencing remand, consistent with *People v. Franklin* (2016) 63 Cal.4th 261 (*Franklin*). Respondent concedes the final point. We remand for that purpose and affirm in all other respects.

Facts

Appellant was 19 years old and about six months pregnant in January 2012, when she left her native Oaxaca, Mexico and walked across the border into the United States. She made her way to Oxnard where she lived with her sister and her sister's family. Another sister also lived in Oxnard with her family. Appellant supported herself by doing agricultural labor. Appellant told no one about her pregnancy.

On the afternoon of May 18, 2012, appellant left the field where she had been picking strawberries and walked across the street to a field where no one was working. In a secluded corner of the field, sheltered by tall flowers and black mesh fencing, appellant gave birth to a live boy. She laid him down on the dirt and used her cell phone to take photos and video of him, focusing on his penis. After resting for awhile, appellant used the same cell phone to call her sister for a ride. She left the baby in the field, on the dirt, partially concealed by the flowers and fencing. Appellant told no one that she had given birth.

A farm worker discovered the dead baby's body on the morning of May 21, 2012 while inspecting irrigation lines in the field. The placenta and umbilical cord were still attached and there was blood on the ground near the body. Dirt around the body appeared to have been displaced by the baby's movement of

his limbs. The medical examiner determined the baby was born full term and alive.

DNA samples were voluntarily obtained from workers in the field, one of whom was appellant's sister, Margarita. Margarita was determined to be a close biological relative of the baby's mother. Surveillance of Margarita's home led officers to appellant. Analysis of appellant's DNA revealed she was the baby's mother and the source of the blood found at the scene.

Contentions

Appellant contends that the statements she made to law enforcement should have been excluded because she received incomplete *Miranda* warnings and did not knowingly and intelligently waive her privilege against self incrimination. She further contends there is no substantial evidence that she acted with premeditation and deliberation. Finally, appellant contends she is entitled to a limited sentencing remand for the purpose of making a sufficient record for a future youth offender parole hearing. (*Franklin*, *supra*, 63 Cal.4th 261.)

Discussion

Appellant's Statements to Law Enforcement

Appellant is a native of a poor, rural village in Oaxaca, Mexico. The village has no roads, running water or electricity. People in the village speak Mixteco, which is appellant's first language and the language she speaks with her family. Appellant grew up in poverty. Her father cut wood and tended sheep to make money. Appellant did household chores and helped her father with the sheep. She attended school, taught in Spanish, to the fifth grade. Appellant's cell phone was searched after her arrest. It contained many text messages, all of which were written in Spanish. In addition, telephone conversations

between appellant and her sister Antonina, and between appellant and a possible romantic partner, Lorenzo, were recorded. Both parties in these conversations are speaking Spanish. Appellant's sister Antonina speaks Spanish with her husband and children. While appellant lived with Antonina, she also sometimes spoke Spanish with the family.

Appellant was initially taken into custody on charges relating to the use of false documents. Counsel was appointed to represent her on those charges. While she was in custody, appellant participated in three extended interrogations conducted by Ventura County Sheriff's Detective Jose Lopez. As a native of Mexico City, Spanish is Lopez's first language. Lopez conducted the interviews, and recited the *Miranda* warnings to appellant in Spanish. He was of the opinion that appellant speaks Spanish and understood what he was saying.

Det. Lopez first interviewed appellant on November 30, 2012. When the interview began, he explained to appellant that she had been arrested for using false papers to work. Appellant confirmed that she could speak Spanish. Lopez also told appellant that, if she did not understand him, he would "explain it better, okay?" He then began to explain appellant's *Miranda* rights to her. "[W]hen a person is arrested here in the United States, California, they have certain rights, okay, and I'm gonna explain them to you and then, and then we talk, okay?" The following dialog occurred:

> Det. Lopez [DL]: "Uh . . . each person that is arrested here,
>
> Appellant [A]: Mm-hm.
>
> DL: In the United States, here in California.
>
> A: Mm-hm.

DL: . . . Has certain rights.
A: Oh.
DL: Do you understand me?
A: Each of the ones rested [sic] here. . . .
DL: Arrested, arrested here,
A: Have,
DL: Certain rights.
A: Certain rights.
DL: Yes.
A: Oh.
DL: I'm gonna explain them to you, okay . . . .?
. . . .[Discussion regarding appellant's true name.]"
DL: "Okay, so . . . before . . . you ask me questions and I ask you questions, we have to, uh, take care of this issue, okay?
A: Mm-hm.
DL You have the right to remain silent, do you understand?
A: Mm-hm.
DL: Okay, anything you say can be used against you in a court of law, do you understand?
A: Mm-hm.
DL: Okay, you have the right to have an attorney present while you're being questioned, do you understand?
A: Mm-hm.
DL: Okay, if you don't have an attorney one will be appointed without charge, uh, free to represent you uh, if . . . , if it is necessary or if you wish, okay?
A: Mm-hm.
DL: Do you understand?

A: Mm-hm.

DL: . . . the, the rights?

A: Mm-hm."

After this discussion, Det. Lopez asked appellant questions relating to her use of false documents. He then questioned her at length regarding the baby found in the strawberry field. Appellant made incriminating statements regarding the baby and consented to a search of her cell phone.

Det. Lopez interviewed appellant again six days later on December 5. Lopez explained that appellant had not yet been arrested in relation to the baby and that she was still in custody on the false documents case. He reminded appellant, "[L]et me explain the, the rights to you again and then we go on, because like I said we have several questions, okay? Uh, you have the right to remain uh silent, do you understand?" Appellant replied, "Mm-hm." Lopez continued, "Anything you say and it can be used against you in a court of law, do you understand? Uh, okay, you have the right to an attorney, talk to an attorney and have him present at the time you're being questioned, do you understand? Okay, uh, if you cannot uh hair [sic] an attorney one will be appointed without charge to represent you in court, do you understand? But you already have an attorney, okay." Lopez then began to interrogate appellant about the murder.

The third interview occurred on December 21. When this interview began, Det. Lopez informed appellant that she had been charged with the murder of her baby. Appellant indicated she knew that she already had an attorney. She said she had questions she wanted to ask the detectives. The following conversation occurred:

DL: "But remember, look, if, if you wanna talk to us about this case, first I have to advise you of your rights, okay?

A: Mm-hm. [¶] [¶]

DL: Okay. So let me explain the rights again, okay? You have the right to remain silent, do you understand?

A: Mm-hm.

DL: Anything you say can be used against you in a court of law, do you understand?

A: Mm-hm.

DL: You have the right to have an attorney present during the time you're being questioned if you wish, do you understand?

A: Mm-hm.

DL: Okay, if you don't have money to hire an attorney, one will be appointed to represent you in court, but you already have one.

A: Mm-hm."

Incomplete *Miranda* Warnings.

Appellant contends the statements she made during the interviews with Det. Lopez should have been excluded because the *Miranda* warnings she received where incomplete. Specifically, appellant contends Lopez's warnings did not expressly advise her that she was entitled to appointed counsel before any questioning began. We are not persuaded.

"In considering a claim that a statement or confession is inadmissible because it was obtained in violation of a defendant's rights under *Miranda* . . . , 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*. [Citations.]" (*People v. Bradford* (1997) 14 Cal.4th 1005, 1032–1033; see also *People v. Waidla* (2000) 22 Cal.4th 690, 730.)

"[A] defendant's statement is inadmissible unless all four [*Miranda*] warnings were given to the defendant prior to the interrogation, regardless of the defendant's understanding of his or her rights." (*People v. Bradford* (2008) 169 Cal.App.4th 843, 852.) There is, however, no rigid requirement that the warnings be presented in any particular formulation or "talismanic incantation." (*California v. Prysock* (1981) 453 U.S. 355, 359; see also *People v. Musselwhite* (1998) 17 Cal.4th 1216, 1238; *People v. Wash* (1993) 6 Cal.4th 215, 236.) "The essential inquiry is simply whether the warnings reasonably '"[c]onvey to [a suspect] his [or her] rights as required by *Miranda*."' [Citation.]" (*People v. Wash*, *supra*, at pp. 236-237, second brackets added.)

In *Duckworth v. Eagan* (1989) 492 U.S. 195, for example, the interrogating police officers told the defendant that he had the right to an attorney before and during questioning. They also informed the defendant that "they could not provide [him] with a lawyer, but that one would be appointed 'if and when you go to court.'" (*Id.* at p. 203.) The Supreme Court concluded the warnings given, taken as a whole, adequately conveyed the defendant's right to have counsel present during questioning. (*Id.* at p. 204.)

Similarly, in *Florida v. Powell* (2010) 559 U.S. 50, the Supreme Court held police officers reasonably conveyed the information required by *Miranda* when they informed a suspect that "he had 'the right to talk to a lawyer before answering any of [their] questions' and 'the right to use any of [his] rights at any time [he] want[ed] during th[e] interview.'" (*Id.* at p. 62.) According to the Court, these "two warnings conveyed [the suspect's] right to have an attorney present, not only at the outset of interrogation, but at all times." (*Ibid.*) The word "before" in this warning "conveyed when [the suspect's] right to an attorney became effective – namely, before he answered any questions at all. Nothing in the words used indicated that counsel's presence would be restricted after the questioning commenced." (*Id.* at p. 63.)

Here, the trial court correctly concluded that the warnings given by Det. Lopez reasonably conveyed to appellant that she had a right to counsel before and during the interviews. Lopez explained to appellant, before the first and third interviews began, that she had "the right to have an attorney present while you're being questioned." Prior to the second interview, he told appellant that she had a right to "talk to an attorney and have him present at the time you're being questioned." The warnings did not expressly state that appellant had a right to an attorney before questioning began. At the same time, they did not suggest that the right to counsel would exist only after the interrogation began. Instead, the warnings clearly convey that appellant could have her attorney present while she was being questioned. This implies that the attorney also would be available before the questioning started. Like the trial court, we conclude the warnings reasonably conveyed to appellant that she was entitled

to have an attorney present before and during questioning. (*Duckworth v. Eagan*, *supra*, 492 U.S. at p. 203.)

Knowing and Intelligent Waiver of *Miranda* Rights.

To be effective, the waiver of *Miranda* rights must be voluntary, knowing and intelligent. (*Miranda*, *supra*, 384 U.S. at p. 479.) We determine whether appellant's waiver of her rights meets these criteria by considering the totality of the circumstances surrounding the interrogation, including appellant's own background, age, experience and conduct during the interrogation. (*Edwards v. Arizona* (1981) 451 U.S. 477, 482; see also *People v. Davis* (2009) 46 Cal.4th 539, 586.) "One precondition for a voluntary custodial confession is a voluntary waiver of *Miranda* rights, and language difficulties may impair the ability of a person in custody to waive these rights in a free and aware manner." (*United States v. Heredia-Fernandez* (9th Cir. 1985) 756 F.2d 1412, 1415.)

Appellant contends that she did not knowingly and intelligently waive her *Miranda* rights. She contends that she did not understand what Det. Lopez was talking about or the consequences of waiving her *Miranda* rights because of her poor Spanish language skills, minimal education, isolated rural upbringing and lack of prior contact with the American legal system. We conclude substantial evidence supports the trial court's finding that appellant's understanding of the Spanish language was sufficient to permit her to make a voluntary and intelligent waiver of her *Miranda* rights.

The record contains substantial evidence that appellant speaks and understands Spanish. She spoke Spanish with a jail employee before her first interview with Det. Lopez. She told Lopez that she could speak Spanish and said that she spoke

Spanish with her relatives. In addition, appellant's cell phone contained hundreds of Spanish language text messages that appellant exchanged with friends and family. Lopez, whose first language is Spanish, testified that he believed appellant understood what he was saying during the interviews. Her answers, given in Spanish, to questions asked in Spanish were responsive and intelligible to Lopez and to the interpreter who prepared the transcripts of appellant's interviews.

When Det. Lopez gave appellant the *Miranda* warnings and asked whether she understood her rights, appellant answered with terms like "mm-hmm" and "uh-huh." An interpreter testified that both of those terms mean "yes" in Mixteco, appellant's first language. Appellant also nodded her head to signal an affirmative response to these questions. She did the same when agreeing with undisputed or noncontroversial facts, such as her sister's name or the date of her arrival in the United States. Finally, the transcripts and video tapes of the interviews demonstrate that appellant was able to ask questions of Lopez when she did not understand his questions. She did not ask for clarification when he recited her *Miranda* rights.

We conclude appellant understood the Spanish language enough to understand and voluntarily waive her *Miranda* rights. The trial court's finding that appellant knowingly and voluntarily waived her rights was supported by substantial evidence.

First Degree Murder

Appellant contends her conviction of first degree murder must be reversed because there is no substantial evidence she acted with premeditation and deliberation to kill the infant. We disagree.

"'When considering a challenge to the sufficiency of the evidence to support a conviction, we review the entire record in the light most favorable to the judgment to determine whether it contains substantial evidence – that is, evidence that is reasonable, credible, and of solid value – from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.' [Citation.] We determine 'whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' [Citation.] In so doing, a reviewing court 'presumes in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence.' [Citation.] 'This standard applies whether direct or circumstantial evidence is involved.' [Citation.] '[I]t is well settled that intent to kill or express malice . . . , may . . . be inferred from the defendant's acts and the circumstances of the crime.' [Citation.]" (*People v. Avila* (2009) 46 Cal.4th 680, 701.) "[I]f the verdict is supported by substantial evidence, we must accord due deference to the trier of fact and not substitute our evaluation of a witness's credibility for that of the fact finder. [Citations.]" (*People v. Jones* (1990) 51 Cal.3d 294, 314.)

A murder is of the first degree if it is premeditated and deliberate. (*People v. Pearson* (2013) 56 Cal.4th 393, 443.) "'An intentional killing is premeditated and deliberate if it occurred as the result of preexisting thought and reflection rather than unconsidered or rash impulse.' [Citation.] In this context, "'premeditated" means "considered beforehand," and "deliberate" means "formed or arrived at or determined upon as a result of careful thought and weighing of considerations for and against the proposed course of action."' [Citation.] We normally consider

three kinds of evidence to determine whether a finding of premeditation and deliberation is adequately supported—preexisting motive, planning activity, and manner of killing—but '[t]hese factors need not be present in any particular combination to find substantial evidence of premeditation and deliberation.' [Citation.] If the evidence of preexisting motive and planning activity by itself is sufficient to support the first degree murder conviction on a theory of premeditation and deliberation, we need not review the evidence concerning the manner of killing. [Citation.]" (*People v. Jennings* (2010) 50 Cal.4th 616, 645–646.)

Appellant contends the evidence was insufficient to show that she intended to kill her son when she left him in the field or that her actions were the result of pre-existing reflection or a pre-conceived design. Our review of the record leads us to the opposite conclusion.

First, there was some evidence appellant planned in advance to abandon the baby. She told no one of her pregnancy, did not seek pre-natal care and made no preparations to care for a baby. She also concealed the birth itself and left the infant where he was unlikely to be rescued.

Second, the manner in which appellant killed the baby demonstrates that she considered alternatives and decided to cause his death. Appellant testified that, when she realized she was in labor, she walked to an isolated area in a field where there were no other workers. There, she delivered the baby. The field is surrounded by busy roads; no passerby could have heard the baby crying. After she laid him down on the dirt, his body was obscured from view by plants and a black fabric fence. Appellant told Det. Lopez that she thought about keeping the baby. "I was thinking to have him or not, what was I gonna do." Ultimately,

she "changed [her] mind" and decided she was "no longer going to have him." Appellant used her phone to take pictures and a short video of the baby, showing his penis. She rested for awhile and then used the same phone to call her sister for a ride home. Then she walked away from the baby, climbed over the fence and waited for her ride. She left the baby naked lying in the dirt. Appellant told no one about his birth or whereabouts.

In sum, appellant considered whether to pick up the baby and take him somewhere he could be cared for, or to abandon him to the elements where he would certainly die of exposure. She chose the latter course of action. Appellant's own account of her behavior during and after the birth demonstrates that she acted in a premeditated and deliberate manner.

There was also substantial evidence of motive. Appellant admitted that the baby's biological father wanted nothing further to do with her or with the baby. She told Det. Lopez that she intended to send the video of the baby to the biological father. A reasonable jury could infer that appellant left the baby to die in an act of revenge against the biological father. In addition, there was evidence that appellant had a romantic relationship with another man. The baby could have been an impediment to that relationship.

A reasonable jury could infer from the evidence that appellant planned to abandon her child after its birth. She made no preparations to care for it and told no one she was pregnant. After giving birth, appellant reflected on her options and made the deliberate choice to abandon her newborn baby to his certain death in the field. She ensured his death by concealing him in a remote corner of the field and by failing to tell anyone of his existence. Appellant's motives were to exact revenge against the

biological father and to preserve her relationship with another man. This constitutes substantial evidence of premeditated and deliberate murder.

Youth Offender Parole Hearing

Appellant was 19 years old when she committed this murder. She was sentenced in March 2016 to a term of 25 years to life. In 25 years, she will be entitled to a youth offender parole hearing. (§ 3051, subds. (a)(1), (b)(4).) At that hearing, evidence relating to appellant's youth will be considered. (§ 4801, subd. (c) [Board of Parole Hearings "shall give great weight to the diminished culpability of juveniles as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity of the prisoner"].)

Franklin, *supra*, 63 Cal.4th 261, holds that a youthful offender is entitled to place on the record at sentencing information that will be relevant, under sections 3051 and 4801, at the youth offender parole hearing. (*Id.* at p. 284.) If the offender was not afforded that opportunity at sentencing, the matter may be remanded to the trial court for the limited purpose of creating an accurate record of the offender's youth-related characteristics and circumstances. (*Ibid.*)

Here, the parties concede appellant had no opportunity to create a record for her youth offender parole hearing because she was sentenced before *Franklin* was decided. We therefore remand the matter to the trial court to provide the parties an opportunity to make an accurate record of appellant's youth-related characteristics and circumstances at the time of her offense, for use at her future youth offender parole hearing. (*Franklin*, *supra*, 63 Cal.4th at p. 284.)

Conclusion

The matter is remanded to the trial court for the limited purpose of affording the parties an opportunity to make an accurate record of appellant's youth-related characteristics and circumstances for use at her future youth offender parole hearing. In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

GILBERT, P. J.

PERREN, J.

Jeffrey G. Bennett, Judge

Superior Court County of Ventura

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