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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

ESTEBAN ACEVES,

Defendant and Appellant.

2d Crim. No. B248691  
(Super. Ct. No. LA070600-01)  
(Los Angeles County)

Esteban Aceves appeals from the judgment entered after the trial court convicted him of selling a controlled substance (Health & Saf. Code, § 11352, subd. (a)) and possession of a controlled substance (Health & Saf. Code, § 11350, subd. (a)). Appellant was sentenced to felony jail: one year county jail and two years mandatory supervision. (Pen. Code, § 1170, subd. (h)(5).) We affirm.

*Facts and Procedural History*

On the afternoon of April 2, 2012, Los Angeles Police Officer Rodolfo Rodriguez saw appellant make a hand-to-hand drug sale in the rear parking lot of a San Fernando Valley bar. It was a high-traffic narcotics area, well known for "call and deliver" narcotics sales. Appellant walked up to a Nissan pickup and gave the driver (Jimmy Schuyler) something. Schuyler leaned toward the center console and spoke briefly to appellant before appellant walked back into the bar.

Los Angeles Police Officer Sorina Thomas searched Schuyler's truck, finding 2.65 grams of cocaine in the center console. Appellant had \$112 in his pants pocket. Waiving his *Miranda* rights (*Miranda v. Arizona* (1966) 384 U.S. 436 [16 L.Ed.2d 694]), appellant said that Schuyler, a coworker, gave him \$120 and that he got Schuyler two baggies of cocaine.

At trial, appellant stated that he was a maintenance worker at CBS Studios and was out shopping for used truck tires. After appellant ended up in the bar, Schuyler called and asked him to step outside. When appellant went outside, officers ordered him to "come over here" and asked where the drugs were. Appellant consented to a search of his person and testified that he was not read his *Miranda* rights.

#### *Spanish Interpreter*

Appellant argues that his due process rights were violated because he was not provided a Spanish interpreter at all stages of the proceedings.<sup>1</sup> On the first day of trial, defense counsel said that he was able to work without an interpreter "but for something as serious as this trial, [appellant] will need -- and I ask[] for an interpreter." A Spanish interpreter was appointed and assisted appellant throughout the trial. Using the interpreter, the trial court took appellant's jury waiver a second time "to be on the safe side." The trial court asked: "Previously, did you have any problem understanding what was going on in court without an interpreter?" Appellant responded, "No."

At trial, appellant stated that he primarily spoke Spanish and had lived in the United States for 28 or 29 years. Appellant admitted that he spoke and understood English and that he could communicate in English. When asked why he requested an interpreter late in the proceeding, appellant replied, "I wanted to be more certain, like in this type of

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<sup>1</sup> Article I, section 14 of the California Constitution provides: "A person unable to understand English who is charged with a crime has a right to an interpreter throughout the proceedings." Our Supreme Court has recognized the due process implications of such a right. (*People v. Rodriguez* (1986) 42 Cal.3d 1005, 1011-1012.) "The denial of an interpreter in any given case may take many forms and may affect any, all or none of these . . . constitutional rights. Violations of article I, section 14, may range from complete failure to provide an interpreter to the momentary absence of an interpreter at an inconsequential moment in the proceedings." (*Id.*, at p. 1012.)

interrogation, to be aware of what I was being asked." Before and during trial, appellant answered some questions in English and had no difficulty understanding what was said.

The due process right to an interpreter is contingent upon the defendant's being unable to understand English. (*People v. Carreon* (1984) 151 Cal.App.3d 559, 566-567.) There is no evidence appellant needed or wanted a Spanish interpreter before commencement of trial. Nor is reversal required where, as here, the alleged error is harmless beyond a reasonable doubt. (*People v. Rodriguez, supra*, 42 Cal.3d at p. 1012 [applying *Chapman v. California* (1967) 386 U.S. 18 [17 L.Ed.2d 705] standard of review].)

In the pretrial proceedings, appellant waived formal arraignment, waived the right to a preliminary hearing, and waived jury trial with the assistance of defense counsel. Appellant stated that he had no problems understanding what was going on. This was confirmed by appellant's trial attorney who was able to work with appellant without an interpreter.

Appellant's assertion that the trial court was required to inquire about a Spanish interpreter before trial, even though no interpreter was requested, is without merit. Appellant spoke English and understood what was going on in the pretrial proceedings. The alleged error in not providing an interpreter before trial was harmless under any standard of review. (*People v. Rodriguez, supra*, 42 Cal.3d at p. 1019.)

#### *Miranda Statement*

Appellant asserts that the trial court erred in admitting his confession because he may not have understood the *Miranda* admonition that was read in English. Appellant made an oral motion to suppress his statement during the trial. The trial court ruled that Penal Code section 1538.5 does not permit oral motions to suppress evidence. "If you're trying to strike the statement on voluntariness grounds, that's a different motion. I'll consider it -- it would be a [Evidence Code section] 402 motion. Since this is a court trial, I can consider it simultaneously."

Appellant did not ask the trial court to rule on the motion and is precluded from raising the issue on appeal. (*People v. Green* (1982) 134 Cal.App.3d 587, 589; *People*

v. *Bennett* (1976) 60 Cal.App.3d 112, 116.) "That is the rule. No exception is available." (*People v. Rowland* (1992) 4 Cal.4th 238, 259.)

On the merits, the record shows that appellant's *Miranda* statement was knowing, intelligent, and voluntary. Appellant consented to a search of his person and agreed to waive his rights and talk to Officer Wilcer Godoy. The *Miranda* warning was in English and appellant responded in English. Appellant answered "yes" to each *Miranda* admonition and wanted to talk. Officer Godoy testified that appellant's English was "good," and that appellant appeared to understand everything that was said. Officer Godoy asked questions in English and appellant answered in English and Spanish.

At trial, appellant admitted that he had no problem understanding Officer Godoy and said that he was arrested and *Mirandized* on a prior occasion in Orange County. The totality of the circumstances surrounding the interrogation, considered in the context of the arrest and appellant's prior police contacts, support the finding that the *Miranda* waiver was free and voluntary. (*People v. Neal* (2003) 31 Cal.4th 63, 79.) There is no evidence that appellant was threatened, tricked, cajoled, or badgered into waiving his rights. (See e.g., *People v. Honeycutt* (1977) 20 Cal.3d 150, 160.)

Assuming that the *Miranda* statement was erroneously admitted, the error was harmless beyond a reasonable doubt. (*Arizona v. Fulminante* (1991) 499 U.S. 279, 310-211 [113 L.Ed.2d 302, 331-332]; *People v. Bradford* (1997) 15 Cal.4th 1229, 1313-1314; see e.g., *People v. Cahill* (1994) 22 Cal.App.4th 296, 318-319.) Two officers saw appellant engage in a hand-to-hand drug sale to Schuyler. The officers found two baggies of cocaine in Schuyler's truck and \$112 in appellant's pocket. Appellant defended on the theory that it was a case of misidentification.

The trial court found that in order to believe appellant's version of the events, "I would have to believe the following: That [appellant] just happens to have \$110 in cash on him, and he happens to stop his car . . . in a neighborhood known for drug transactions[. A]nd then a coworker whom he doesn't know very well just happens to be in the area and feels the need to call [appellant] even though they're not close friends. That person [Schuyler], who was in the middle of a drug transaction decides that he wants to confer with

[appellant] about a paint job on the car . . . . At the same time this conversation about a car paint job is supposed to happen, some other person has a drug transaction [with[ Jimmy [Schuyler] and not one but two officers, get confused and mistake [appellant] for that person. And then Officer Godoy for reasons that are unclear puts words in [appellant's] mouth even though Officer Godoy is a native Spanish speaker himself."

Appellant argues that he did not sign a *Miranda* waiver but there is no requirement that *Miranda* be recorded or written. (*North Carolina v. Butler* (1979) 441 U.S. 369, 373 [60 L.Ed.2d 286, 292]; *People v. Johnson* (1973) 32 Cal.App.3d 988, 998.) "No particular manner or form of *Miranda* waiver is required, and a waiver may be implied from a defendant's words and actions. [Citations.]" (*People v. Davis* (2009) 46 Cal.4th 539, 585.)

The evidence was overwhelming. Appellant received a fair trial and was not prejudiced by the alleged errors.

The judgment is affirmed.

NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J.

Gregory Dohi, Judge  
Superior Court County of Los Angeles

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Carlo A. Spiga, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Steven D. Matthews, Supervising Deputy Attorney General, Herbert S. Tetef, Deputy Attorney General, for Plaintiff and Respondent.