Filed 8/21/18 P. v. Miller CA2/8

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE, Plaintiff and Respondent, v. TYJAE MILLER, Defendant and Appellant.	B285827 (Los Angeles County Super. Ct. No. KA113982)

APPEAL from a judgment of the Superior Court of Los Angeles County, Juan Carlos Dominguez, Judge. Affirmed as modified.

Jenny Macht Brandt, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Marc A. Kohm and Gregory B. Wagner, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Tyjae Miller was convicted by a jury of one count of felony evading a peace officer while driving recklessly (Veh. Code, § 2800.2) and one count of misdemeanor driving without a license (*id*., § 12500). The trial court placed defendant on probation for five years.

Defendant filed a timely appeal from the judgment of conviction, contending the trial court erred in admitting his post-arrest statement to a California Highway Patrol (CHP) officer without proof that the officer had advised defendant of his *Miranda*[1] rights. Defendant also contends the probation condition requiring him to live in a residence approved by his probation officer is constitutionally overbroad. We find defendant has forfeited his claim concerning his postarrest statement and we agree that the residential restriction condition must be stricken. We affirm the judgment in all other respects.

BACKGROUND

On October 29, 2016, about 12:48 a.m., CHP Officer John Gribben was patrolling the westbound side of Interstate 10 in Pomona in a marked CHP vehicle. The officer noticed a motorcycle being driven at a very high speed. The driver was wearing a full face helmet. Officer Gribben paced the motorcycle and estimated the motorcycle was travelling at about 125 miles per hour. The posted speed limit was 65 miles per hour.

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[1] *Miranda v. Arizona* (1966) 384 U.S. 436 [86 S.Ct. 1602, 16 L.Ed.2d 694] (*Miranda*).

Officer Gribben activated his car's lights and siren in an attempt to stop the motorcyclist.[2] The motorcyclist did not pull over. Officer Gribben saw the motorcyclist move his body lower onto the motorcycle into a tucked position. The motorcyclist increased his speed; Officer Gribben estimated the motorcycle was travelling now at 140 miles per hour.

Officer Gribben followed the motorcycle at a distance of about 200 to 300 feet. He observed the motorcyclist make several unsafe lane changes and/or several unsafe turning movements. The officer also saw the motorcyclist enter and exit the carpool lane by crossing the solid line. All of these maneuvers were violations of the Vehicle Code.

CHP Sergeant Elizabeth Vanvalkenburgh and her partner joined the pursuit soon after it started. She activated the lights and siren on her marked patrol car and followed the motorcycle from a distance of 300 to 400 feet. Sergeant Vanvalkenburgh observed the motorcyclist move from the far left lane across all lanes of traffic to the far right side; she believed this was an unsafe lane change, also opining that the motorcyclist was driving unsafely.

The motorcyclist drove from Interstate 10, where the pursuit began, onto the 57 freeway and then onto the 210 freeway heading west. The motorcyclist got off the freeway at Vernon Street. Officer Gribben and Sergeant Vanvalkenburgh also exited the freeway but lost sight of the motorcycle. Officer Gribben learned there was a possibility that the motorcyclist had

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[2] At the same time, the dashboard camera in the CHP vehicle was activated. Video from the camera was shown at trial.

gotten back on the freeway, and so the officer returned to the freeway.

Sergeant Vanvalkenburgh and her partner began driving around on surface streets looking for the motorcycle. On Huntington Drive, the sergeant saw a dark motorcycle being driven by a person wearing a backpack and a white helmet; she believed it was the same motorcycle and motorcyclist she had seen on the freeway. Sergeant Vanvalkenburgh's partner made a U-turn to follow the motorcycle and turned on the car's lights and siren. The motorcyclist accelerated to about 100 miles per hour and drove through three or four red lights.

At this point, a helicopter was assisting in the pursuit. The officers in the helicopter informed the officers on the ground that the motorcyclist had turned into a parking lot. Sergeant Vanvalkenburgh and Officer Gribben both drove to the parking lot. There, they apprehended the motorcyclist; about eight minutes had elapsed. Sergeant Vanvalkenburgh identified the person on the motorcycle as defendant.

Officer Gribben placed defendant under arrest and put defendant in the back seat of a patrol car in handcuffs. Officer Gribben then questioned defendant. The officer asked from where defendant was coming and where he was going, and defendant replied that he was coming from school and going home. Officer Gribben asked defendant how fast he was going prior to Officer Gribben's "initiating the traffic . . . stop." Defendant replied, "90ish." Officer Gribben then asked defendant if he had seen the police lights and if he had heard the police sirens. Defendant replied yes to both inquiries. Officer Gribben asked defendant "how fast he was going when he sped away from [the officer]." Defendant replied, "140 miles an hour."

Defendant explained that he then exited the freeway to get gas. The officer asked defendant why he "took off again" when he saw Sergeant Vanvalkenburgh's patrol car; defendant replied he was scared and that he stopped eventually because he "came to his senses." Officer Gribben asked defendant if the way he was riding was dangerous, and defendant "admitted, yes, it was dangerous." Officer Gribben also asked defendant why he had not stopped when the officer first put his lights and siren on, and defendant replied that he could not afford another ticket.

Defendant testified in his own behalf. On October 29 at about 12:47 a.m., defendant was riding his motorcycle from his automotive school in Rancho Cucamonga to his home in Santa Clarita. His motorcycle was missing an exhaust pipe, and so it was loud. He was wearing a helmet which covered his entire head and had a visor.

Defendant acknowledged he was traveling at about 90 miles per hour on his way home. He took the 10 freeway to the 57 freeway to the 210 freeway. Defendant then got off the 210 freeway at Vernon to get gasoline for his motorcycle. After leaving the gas station, defendant became lost. When he came to a red light, a police car passed him. Defendant made a left turn and then noticed another patrol car do a U-turn. This "freaked . . . out" defendant and he accelerated to 50 miles per hour. Defendant still did not see the freeway, so he pulled into a shopping center to check his cell phone. He noticed a helicopter overhead with a spotlight that appeared to be on him. Defendant moved a little to see if the spotlight was following him. Then officers arrived.

Defendant was handcuffed, placed in a patrol car and questioned by Officer Gribben. Defendant initially told the

officer he was not trying to flee the police. Defendant said it was windy and he did not hear any sirens. He did not see any patrol car lights because his helmet visor was tinted. Officer Gribben seemed to get angry, and so, to appease the officer, defendant then said that he was fleeing.

Defendant testified he did not exceed 90 miles per hour on the freeway, and on surface streets, he drove 50 miles per hour. He did not run any red lights. He did not see or hear a police car behind him.

DISCUSSION

I. Admission of Defendant's Postarrest Statements

Defendant contends the trial court violated his state and federal constitutional rights against self-incrimination by admitting statements defendant made to Officer Gribben after the officer arrested defendant. Defendant maintains the prosecution did not prove Officer Gribben had properly advised defendant of his *Miranda* rights. Specifically, defendant objects to the officer's statement that he read defendant his *Miranda* rights from a department provided card; defendant contends the officer was required to actually read the contents of the card into the record. (See *In re M.* (1969) 70 Cal.2d 444, 462 ["a police officer's conclusory testimony that he gave the questionee advice 'per accordance with the *Miranda* Decision' is inadequate" to show that the defendant received "full and complete" *Miranda* warnings].)

The People contend defendant has forfeited his claim by failing to make a specific objection to the officer's description of reading defendant his rights, failing to secure a clear ruling on

his motion, and failing to object to the officer's testimony during trial. We agree that defendant has forfeited his claim.

A. *Pretrial Proceedings*

On July 27, 2017, just before jury selection began in this matter, the prosecutor presented a trial brief to the court. The court stated: "[T]he item that I would like to concentrate on now is your [Evidence Code section] 402 . . . that you intend to elicit the testimony of Mr. Miller's Mirandized statements to Officer Gribben?" The prosecutor replied, "Yes, Your Honor." Defense counsel then stated: "We would object, and we would ask that they lay the proper foundation, that the proper *Miranda* was given, and before it was introduced and the jury hears that." Defense counsel confirmed he would like to have the hearing outside the presence of the jury. The prosecutor then offered to "refrain from using the statements during the opening statements, and we can lay the proper foundation for the statement concurrently with the trial when the witness is on the stand testifying." The court replied, "Okay. Before he testifies, we'll excuse the jurors and have that hearing."

In fact, the hearing was held on July 31, just before the trial court gave the opening instructions to the jury and thus before opening statements. Officer Gribben was the only witness at the hearing. As relevant here, the prosecutor asked the officer a series of questions concerning what postarrest advisements the officer had given to defendant. The prosecutor asked, "And after placing that defendant under arrest, did you advise him of his rights?" After Officer Gribben replied, "Yes," the prosecutor clarified, "What rights?" The officer responded, "His Miranda rights." The prosecutor asked, "[D]id you recite those rights from

memory?" Officer Gribben replied, "Off a card." The prosecutor asked, "Is that a card issued to you by your department?" The officer agreed it was. The prosecutor asked, "And when you say you read it off the card, did you pull it out and read it verbatim?" Officer Gribben replied, "Yes." The officer also testified that defendant "verbally convey[ed]" that he understood the rights and agreed to waive them.

Defense counsel questioned Officer Gribben about the conditions of defendant's arrest and Officer Gribben's questioning but did not ask questions about the *Miranda* advisements. After the officer was excused, the trial court said, "Mr. Gomez?" Defense counsel Gomez replied, "Your Honor, I would submit." The court stated, "Very well. Okay. Let's have the jurors come in." The court then began preinstructing the jurors. The minute order for this date does not reflect a ruling on defendant's motion.[3] There is no further reference to the *Miranda* issue in the reporter's or clerk's transcripts.

During opening statements, the prosecutor referred to defendant's statement. She told the jury: "After the defendant was placed under arrest, Officer Gribben advised him of his rights and asked him some questions. At the time, he asked the defendant some questions, he realized that the statements made were consistent with someone who was aware that he was being

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[3] This minute order states only: "Out of the presence of the jury, People's witness John Gribben is sworn and testifies. [¶] Trial, continued from July 28, 2017, resumes . . . . [¶] Court pre-instructs the jury. [¶] Opening statements are given by both sides. [¶] John Gribben, previously sworn, resumes testimony for the People."

pursued, and that he was, in fact—they were pursuing him on the 10 west freeway." Defense counsel did not object.

In the defense opening statement, defense counsel also referred to defendant's statement. He told the jury: "The evidence will show that the officer did not record that conversation, even though it was in his patrol vehicle in the back of the patrol vehicle, yet there was no recording of the conversation."

Officer Gribben was the prosecutor's first witness. On direct examination he testified he placed defendant under arrest and then questioned defendant. The prosecutor then asked Officer Gribben many detailed questions about the information the officer had obtained from defendant. (These questions and answers are set forth in more detail in the background section above.) Defense counsel did not object to any of the prosecutor's questions.

During cross-examination of Officer Gribben, defense counsel returned to the topic of the officer's questioning of defendant, focusing on the substance of defendant's answers and on the officer's failure to memorialize the interview.

B. *Law*

In *People v. Obie* (1974) 41 Cal.App.3d 744, disapproved on other grounds by *People v. Rollo* (1977) 20 Cal.3d 109, 120, fn. 4, the court articulated the well-known rule that "'[Where] the court, through inadvertence or neglect, neither rules nor reserves its ruling . . . the party who objected must make some effort to have the court *actually rule*. If the point is not pressed and is forgotten, he may be deemed to have waived or abandoned it, just as if he had failed to make the objection in the first place.'

(Witkin, Cal. Evidence (2d ed. 1966) § 1302, p. 1205; *People* v. *Staver* (1953) 115 Cal.App.2d 711, 724 . . . .)" (*Obie*, *supra*, at p. 750.)

If a court makes an *in limine* ruling that evidence is admissible, as a general rule, "'the party seeking exclusion must object [again] at such time as the evidence is actually offered to preserve the issue for appeal' [citation]." (*People v. Brown* (2003) 31 Cal.4th 518, 547.) This rule applies to claims that a defendant was not properly advised of his *Miranda* rights. (See *People v. Crittenden* (1994) 9 Cal.4th 83, 126 (*Crittenden*).)

There are at least two exceptions to this general rule. First, "if a motion to exclude evidence is made raising a specific objection, directed to a particular, identifiable body of evidence, at the beginning of or during trial at a time when the trial judge can determine the evidentiary question in its appropriate context, the issue is preserved for appeal without the need for a further objection at the time the evidence is sought to be introduced." (*Crittenden*, *supra*, 9 Cal.4th at p. 127.) "'Specificity is required both to enable the court to make an informed ruling on the motion or objection and to enable the party proffering the evidence to cure the defect in the evidence. [Citations.]' [Citation.]" (*Id*. at p. 126.) As a second exception, "a sufficiently definite and express *ruling* on a motion in limine may also serve to preserve a claim [citation]." (*People v. Brown*, *supra*, 31 Cal.4th at p. 547, italics added.)

C. *Analysis*

Defendant contends "trial counsel objected to the adequacy of the warnings when he made the motion to exclude the statement on the basis of a *Miranda* violation." He further

claims this objection was "specific" and otherwise met the requirements of *Crittenden* for preserving his claim. We do not agree.

When the prosecutor indicated her intent to introduce defendant's statements to Officer Gribben, defense counsel simply stated: "We would object, and we would ask that they lay the proper foundation, that the proper *Miranda* was given . . . ." This objection is broad, and was made before the trial court or the parties knew the details of Officer Gribben's interaction with defendant after defendant's arrest. Any number of flaws could have been revealed by the officer's testimony. Once the officer testified that he read verbatim from a department issued card, defense counsel could and should have made the specific objection that the officer's summary testimony was not sufficient. Had counsel made such an objection, the prosecution would have had the opportunity to cure the defect by asking the officer to produce the card and read its contents out loud. The purpose of the specificity requirement is to give the other party the opportunity to cure the defect. (*Crittenden*, *supra*, 9 Cal.4th at p. 126.)

Our Supreme Court has found waiver in very similar circumstances. In *In re M.*, *supra*, 70 Cal.2d at p. 462, the police officer "testified that he used a slip or card 'per accordance with the *Miranda* Decision'" to advise the defendant of his rights, but when the officer was asked in court "to paraphrase from memory the contents of the slip," he left out "the required warning that anything [the defendant] said could and would be used against him in court." (*Id.* at pp. 461-462.) Our Supreme Court held that "the witness' oversight appears to have been of the sort which could easily have been corrected had it been promptly called to his attention. [The defendant's] able trial counsel, however, did

not choose to make an appropriate objection, and in such circumstances the objection will be deemed waived." (*Id*. at p. 462.) We are compelled to reach a similar result here: defendant has forfeited his claim that Officer Gribben's testimony is insufficient evidence of a full and complete *Miranda* advisement.

Defense counsel also contends it is reasonable to infer from the trial court's comments at the end of Officer Gribben's testimony that the court intended to deny the motion to exclude. The court's remarks of "Very well" and "Okay" were made immediately after defense counsel's statement that he would submit. The remarks appear to be an acknowledgement of defense counsel's decision, not a substantive ruling. Further, even assuming the court's remarks were a ruling, they were not "a sufficiently definite and express ruling on a motion in limine" which could serve to preserve defendant's claim. (*People v. Brown*, *supra*, 31 Cal.4th at p. 547.) A further objection was required from defendant.

II. Probation Condition

Defendant contends the probation condition requiring him "to maintain a residence as approved by [his] probation officer" is unconstitutionally overbroad. The People contend defendant has forfeited this claim by failing to object to it in the trial court.

We do not find forfeiture. "[W]here a claim that a probation condition is facially overbroad and violates fundamental constitutional rights is based on undisputed facts, it may be treated as a pure question of law, which is not forfeited by failure to raise it in the trial court. [Citations.]" (*People v. Stapleton* (2017) 9 Cal.App.5th 989, 994 [finding no forfeiture of

defendant's claim that probation condition requiring residency approval was constitutionally overbroad].)

A probation condition is overly broad if it infringes on a defendant's constitutional rights and is not narrowly tailored to serve the interests of rehabilitation, preventing future criminality and ensuring public safety. (*People v. Pointer* (1984) 151 Cal.App.3d 1128, 1139-1140.) A condition is also overly broad if it leaves unfettered discretion in the probation officer to interpret the term. (*People v. Bauer* (1989) 211 Cal.App.3d 937, 945.)

A condition that permits a probation officer to decide where a probationer lives infringes on the probationer's constitutional rights to privacy, to freely associate and to travel. (*People v. Bauer*, *supra*, 211 Cal.App.3d at pp. 944-945 [considering housing approval requirement].)

Here, the probation officer did not recommend a residential restriction, and the trial court offered no explanation for its purpose in imposing the term. Defendant lived with his parents at the time of the current offense, and there is nothing to indicate that such a living arrangement contributed to defendant's recklessness.

Respondent theorizes that it is the distance from defendant's residence to his school or work that contributed to defendant's reckless driving and that the probation condition would likely mean defendant "would likely be required to live in a location where he is close to school or work." There is nothing in the record to indicate such a concern on the part of the trial court.

DISPOSITION

The residential approval condition is ordered stricken. As so modified, judgment is affirmed.

GOODMAN, J.*

We concur:

BIGELOW, P. J.

RUBIN, J.

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* Retired judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.