Filed 9/26/19 In re D.V. CA2/6

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re D.V., a Person Coming Under the Juvenile Court Law.	2d Juv. No. B293467 (Super. Ct. No. KJ40683) (Los Angeles County)
THE PEOPLE, Plaintiff and Respondent, v. D.V., Defendant and Appellant.	

D.V. appeals the juvenile court's order sustaining a wardship petition charging him with second degree robbery (Pen. Code, § 211; Welf. & Inst. Code, § 602). The court declared appellant a ward of the court and ordered him home on probation with various terms and conditions. Appellant contends the court's order must be reversed because statements obtained in

violation of his *Miranda*[1] rights were admitted against him at the adjudication hearing. We conclude the statements were properly admitted on rebuttal to impeach appellant's credibility. We affirm.

FACTS AND PROCEDURAL HISTORY

Prosecution's Case-in-Chief

Danny M. (Danny) advertised a pair of athletic shoes for sale for $300 on his Snapchat account. The following afternoon, appellant sent Danny a text message offering to exchange the shoes for an ounce of marijuana. Danny declined but agreed to sell the shoes for $250 and told appellant they should meet at Danny's apartment building that afternoon to complete the transaction.

As Danny was standing in the parking lot of his building with the shoes, appellant arrived in a car with Marquise Ogletree and Alex Gomez. Danny knew appellant, Ogletree and Gomez because he had gone to high school with them and they all played on the football team. Appellant got out of the car and Danny M. placed the shoes on the roof of the vehicle. After briefly inspecting one of the shoes, appellant told Danny he only had $300 in large bills and asked if Danny had change. Danny took out his wallet and appellant grabbed it. Garcia got out of the vehicle, held his waistband, and said, "don't make this harder than it should be." Danny resisted and appellant and Gomez assaulted him.

Appellant and Gomez grabbed Danny's wallet and the shoes and got back into their vehicle. Danny briefly held onto the car as it sped away, which caused him to fall on the asphalt and

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

suffer road rash injuries. The police responded to the scene and took Danny's statement. Danny also showed the officers his Snapchat advertisement and a photograph of the stolen shoes.

While executing a search warrant at appellant's residence, the police found ten shoeboxes containing shoes similar to those stolen from Danny. The police also found two cellphones in the shoeboxes and appellant admitted they were his. One of the phones contained photographs of appellant, Gomez, and Ogletree together outside of appellant's apartment building. The same phone had been used to locate Danny's address.

Defense

Appellant testified on his own behalf. He claimed that he went to Danny's apartment building not to buy shoes but to purchase marijuana oil cartridges. He asked Gomez and Ogletree to accompany him "for [his] safety."

When they arrived at Danny's apartment building, appellant got out of the car and began counting the cartridges. Danny reached inside the car, grabbed appellant's cellphone from the front passenger seat, and began walking away with it. Appellant placed the bag of cartridges on the roof of the car, stopped Danny, and asked him what he was doing. Danny accused appellant of trying to rob him and appellant showed him he had the money to purchase the cartridges.

Gomez got out of the car and restrained Danny so appellant could retrieve his phone. Danny would not return the phone so appellant punched him. Appellant retrieved his phone and threw it in the car. Appellant and Gomez got back into the car and drove away. Danny held on to the vehicle and was briefly dragged until he let go.

On cross-examination, appellant acknowledged that he spoke to Asuza Police Detective Lauren Ferrari about the incident after waiving his *Miranda* rights. He denied telling the detective he did not know Danny, Gomez, or Ogletree; rather, he acknowledged knowing them but claimed he had not seen any of them since they all graduated from high school.

Rebuttal

Detective Ferrari assisted in the execution of the search warrant at appellant's residence. After appellant was escorted out of the house by other officers, Detective Ferrari handcuffed him and allowed him to sit on the curb with other members of his family. For officer safety, handcuffing a suspect in such circumstances is standard procedure.

Approximately 20 minutes later, Detective Ferrari unhandcuffed appellant and told him he was being detained on suspicion of robbery but was not under arrest. She asked him if he knew Danny, Gomez, or Ogletree, and if he had agreed to buy a pair of shoes from Danny. Appellant answered in the negative.

Appellant was subsequently arrested and transported to the police station. After waiving his *Miranda* rights, he once again denied that he knew Ogletree. He later admitted that he knew both Danny and Ogletree, but continued to deny he also knew Gomez or that he had agreed to buy shoes from Danny.

Miranda *Motion*

After both sides rested, appellant's counsel moved to "strike the un-*Mirandized* portions of the statements" appellant made to Detective Ferrari. After acknowledging there "wasn't much" to the statements, counsel argued that "a person in [appellant's] circumstances where he's the only one led out in handcuffs and told he's a suspect in a robbery case would consider themselves

not free to leave. And that level would constitute an arrest as opposed to a detention." Counsel also challenged the statements appellant made at the police station after he waived his *Miranda* rights on the ground that "he should have been *Mirandized* initially." The court denied the motion.

DISCUSSION

Appellant contends the court committed reversible error in denying his *Miranda* motion. We are not persuaded.

Miranda and its progeny address the admissibility of evidence against an accused *in the prosecution's case-in-chief*. (*Harris v. New York* (1971) 401 U.S. 222, 223-224 [28 L.Ed.2d 1].) Here, the challenged evidence was admitted *on rebuttal* to impeach appellant's trial testimony. Even in the face of a deliberate *Miranda* violation, the prosecution may use the elicited statements in rebuttal to impeach a defendant's contrary testimony as long as the defendant's statements are otherwise voluntary. (*Id.* at p. 225; *People v. Sanchez* (2019) 7 Cal.5th 14, 58.) "'The shield provided by *Miranda* cannot be perverted into a license to use perjury by way of a defense, free from the risk of confrontation with prior inconsistent utterances.'" (*People v. Nguyen* (2015) 61 Cal.4th 1015, 1075.)

Moreover, appellant's trial counsel merely sought to exclude appellant's extrajudicial statements on the ground they were obtained in violation of *Miranda*. Because counsel never objected that Detective Ferrari's testimony constituted improper rebuttal evidence, appellant has forfeited any claim that the trial court erred in admitting that testimony as rebuttal evidence. (*People v. Nunez and Satele* (2013) 57 Cal.4th 1, 30 [defendant forfeited the claim that testimony constituted improper rebuttal evidence where he "did not raise this objection at trial"].)

In any event, the record does not demonstrate that appellant's statements were involuntary such that they could not be used for impeachment purposes. A statement is involuntary in this regard "'when, among other circumstances, it "was "'extracted by any sort of threats . . . , [or] obtained by any direct or implied promises, however slight. . . .'"' [Citations.] Voluntariness does not turn on any one fact, no matter how apparently significant, but rather on the "totality of [the] circumstances.'" [Citation.]" (*People v. Nguyen*, *supra*, 61 Cal.4th at p. 1078.)

In purporting to show that his statements were involuntary, appellant merely recites the facts surrounding his initial questioning and offers "[i]t is unreasonable to believe that in that moment, appellant's will was not overborne, or that he was in any way, able to resist the pressure coming at him." He makes no attempt to distinguish or analogize to any of the cases addressing the issue of voluntariness in this context. (See, e.g., *People v. DePriest* (2007) 42 Cal.4th 1, 34-36, and cases cited therein.) He also fails to appreciate that he maintained his innocence to Detective Ferrari, which contradicts his claim that his free will was overborne by her questioning of him. (See *People v. Case* (2018) 5 Cal.5th 1, 26 ["[S]ignificantly, throughout the interrogation defendant steadfastly maintained that he was innocent, which tends to undercut the notion that his free will was overborne by the detective's remarks."]; *People v. Williams* (2010) 49 Cal.4th 405, 444 ["Significantly . . . defendant did not incriminate himself as a result of the officers' remarks.

[Citation.] Rather, defendant continued to deny responsibility in the face of the officers' assertions."].)[2]

DISPOSITION

The judgement (order of wardship) is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

YEGAN, Acting P.J.

TANGEMAN, J.

[2] Because appellant merely admitted that he knew Danny and Ogletree after initially claiming otherwise, continued to deny that he knew Gomez, and continued to profess his innocence throughout Detective Ferrari's questioning of him, it is also clear that any error in admitting his statements was harmless beyond a reasonable doubt.

Mark R. Frazin, Judge
Superior Court County of Los Angeles

Courtney M. Selan, 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, Senior Assistant Attorney General, David E. Madeo and Idan Ivri, Deputy Attorneys General, for Plaintiff and Respondent.