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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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. THERESA LYNN MARKS, Defendant and Appellant.	2d Crim. No. B234870 (Super. Ct. Nos. 2009004092, 2005026565, 2008037840) (Ventura County)

Theresa Lynn Marks appeals the judgment following her convictions for driving under the influence causing injury (Veh. Code, § 23153, subd. (a)),[1] driving with a blood alcohol level of 0.08 percent or more (*id.* at subd. (b)), driving under the influence with prior convictions (§§ 23152, subd. (a), 23550.5, subd. (a)) driving with a blood alcohol level of 0.08 percent with priors (§§ 23152, subd. (b), 23550.5, subd. (a)), and leaving the scene of an accident (§ 20001, subd. (a)). She was sentenced to two years eight months, consisting of the two-year midterm for driving with a blood alcohol level of 0.08 with priors and eight months for leaving the scene of an accident. Sentence was imposed but stayed under Penal Code section 654 as to the other counts. Marks claims

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

Miranda error,[2] and that the trial court abused its discretion in limiting her closing argument regarding the beyond a reasonable doubt standard of proof. We affirm.

FACTS

A black pickup truck driven by Marks collided with a vehicle driven by Alison Ramsaier. Ramsaier suffered chest and neck injuries and a bloodied lip.

The black pickup truck pulled to the side of the road where the female driver got out and ran or walked quickly away from the accident into an alley. A taller man in the passenger seat got out of the truck, but remained nearby.

Deputy Sheriff Eric Seefeldt arrived at the scene. After leaving his partner with the victim, he investigated the pickup truck. No one was inside the truck but the keys had been left in the ignition. A few minutes later, Deputy Sheriff Paul Krueger went looking for the female driver of the truck. He found Marks walking unsteadily away from the accident. She showed Krueger a California identification card with the same address as that of the registered owner of the truck. She denied she was driving the truck but refused to answer many of Krueger's other questions. Krueger arrested Marks for driving while under the influence of alcohol. A blood test showed a 0.26 blood alcohol level.

Deputy Seefeldt had checked the license plate on the truck. He determined from that check that, in Seefeldt's words, Marks was "associated" with the truck and that her driver's license was suspended.

Deputy Seefeldt determined from the position of the driver's seat that someone of Mark's height would have been in a comfortable driving position, but that a taller person would not have been. Seefeldt decided to impound the truck. He conducted an inventory of the truck's contents and then began the process of having the truck towed away. Marks had been brought back to the truck, and Seefeldt asked her if she needed the keys which were in the truck's ignition. Marks stated that she needed the keys because they belonged to her and that her house key was on the same key ring.

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[2] (*Miranda v. Arizona* (1966) 384 U.S. 436.)

DISCUSSION

No Miranda Violation

Marks contends the trial court erred by denying her motion to exclude testimony that she told Deputy Sheriff Seefeldt that the truck keys belonged to her. She argues that the statement was made during a custodial interrogation without *Miranda* warnings. We disagree.

Statements made during a police interrogation of a person in custody are inadmissible unless the police have advised the person of his or her rights to remain silent and to an attorney, and that statements made by the person may be used as evidence. (*Miranda v. Arizona*, *supra*, 384 U.S. at p. 444; see *People v. Leonard* (2007) 40 Cal.4th 1370, 1399-1400.) Not every question by a police officer to a person in custody, however, rises to the level of an interrogation requiring *Miranda* warnings. (*People v. Wader* (1993) 5 Cal.4th 610, 637.) "Many sorts of questions do not, by their very nature, involve the psychological intimidation that *Miranda* is designed to prevent. A definition of interrogation that included any question posed by a police officer would be broader than that required to implement the policy of *Miranda* itself." (*United States v. Booth* (9th Cir. 1981) 669 F.2d 1231, 1237.) "'Interrogation,' as conceptualized in the *Miranda* opinion, must reflect a measure of compulsion above and beyond that inherent in custody itself." (*Rhode Island v. Innis* (1980) 446 U.S. 291, 300, fn. omitted.)

The standard for whether communication between police and suspect constitutes an interrogation requiring *Miranda* warnings is whether the police officer "should know" that his or her words or actions "other than those normally attendant to arrest and custody" are "reasonably likely to elicit an incriminating response from the suspect." (*Rhode Island v. Innis*, *supra*, 446 U.S. at p. 301, fns. omitted.) Although the subjective intent of the police is relevant, the standard is objective based on the totality of the circumstances. (*United States v. Booth*, *supra*, 669 F.2d at p. 1237; see *United States v. Gonzalez-Mares* (9th Cir. 1985) 752 F.2d 1485, 1489; *People v. Wader*, *supra*, 5 Cal.4th at p. 637.) Accordingly, a question would not constitute interrogation if an objective observer would infer the question was not designed to elicit an incriminating

response because it concerned a seemingly innocuous matter not directly related to the police intervention, was obviously spontaneous in nature, or was a non-accusatory question anyone might ask under the circumstances.

The determination of a *Miranda* challenge is a mixed question of law and fact. (*People v. Ochoa* (1998) 19 Cal.4th 353, 401-402.) We defer to the trial court's findings of fact supported by substantial evidence, but independently decide whether the statement occurred during a custodial interrogation for the purpose of obtaining incriminating evidence. (*People v. Pilster* (2006) 138 Cal.App.4th 1395, 1403.)

In the trial court, Marks argued that Deputy Seefeldt's question was an attempt to elicit an admission from her that she was driving the truck at the time of the accident. The trial court ruled that there was no evidence supporting that conclusion because Seefeldt had no knowledge of the details of the conversation between Marks and Deputy Krueger concerning Marks' involvement in the accident. The trial court concluded that Seefeldt's question was not intended to elicit incriminating evidence and was "chiefly an inventory question." We conclude that substantial evidence supports the trial court's factual findings and, based on our independent review, that Deputy Seefeldt's question was designed to obtain routine information to assure the security of the truck and was not part of a custodial interrogation under *Miranda*.

At the hearing on the motion to exclude the evidence, Deputy Seefeldt testified that he decided to impound the truck because Marks had been arrested. There is no dispute that this decision to impound the truck was proper. (See § 22651, subds. (h)(1) & (p).) As part of the process of impounding the vehicle, Deputy Seefeldt asked Marks whether she needed the keys in the ignition and Marks answered that she did because they were her keys and her house key was on the key ring. Seefeldt did not ask Marks whether they were her keys or whether she had been driving the truck. He only asked whether she wanted to take the keys before the truck was towed away to the police impound.

Deputy Seefeldt testified that it was his standard procedure to inventory any vehicle that is to be impounded and that a California Highway Patrol form needed to be

completed. He testified that he generally asked an arrested person if he or she "need[ed] anything out of the vehicle. Commonly people will want their keys, or cell phone, or wallet, or identification, money. So I had asked Theresa [Marks] if she needed the keys from the vehicle, and she told me she did because they belonged to her" and included her house key.

The evidence supports the conclusion that Deputy Seefeldt's question was a routine, non-accusatorial inquiry reasonably necessary for the performance of a legitimate administrative duty, and not a subterfuge designed to elicit incriminating information from a suspect. (See *Pennsylvania v. Muniz* (1990) 496 U.S. 582, 601-602.) The keys had to be included in an inventory of the truck's contents and the return of personal items such as a key ring, wallet or cell phone to an arrestee is a standard procedure used by Seefeldt when a vehicle is being impounded.

Further, the question was asked during a non-investigative part of the arrest. Also, although Deputy Seefeldt knew Marks had denied being the driver of the truck, the evidence supports the trial court's conclusion that Seefeldt did not know the details of any statements she made to Deputy Krueger. There is no evidentiary basis to conclude that asking whether Marks wanted to keep the keys in her possession until she was booked and incarcerated was designed to elicit incriminating evidence that would not otherwise become apparent at the time of booking. The circumstances in their totality do not reflect a degree "of compulsion above and beyond that inherent in custody itself" necessitating the protections of *Miranda*. (*Rhode Island v. Innis, supra,* 446 U.S. at p. 300, fn. omitted; *United States v. Booth, supra*, 669 F.2d at p. 1237.)

No Error in Limitation of Closing Argument

Marks contends that the trial court erred by denying her request to allow defense counsel to argue that proof beyond a reasonable doubt means proof to a "near certainty." Marks claims that the trial court's ruling prevented her counsel from making a point essential to the defense. We disagree.

"A criminal defendant has a well-established constitutional right to have counsel present closing argument to the trier of fact. [Citations.] This right is not

unbounded, however; the trial court retains discretion to impose reasonable time limits and to ensure that argument does not stray unduly from the mark." (*People v. Marshall* (1996) 13 Cal.4th 799, 854-855; see *Herring v. New York* (1975) 422 U.S. 853, 862.) It is also the statutory duty of the trial judge to limit argument of counsel to "relevant and material matters." (Pen. Code, § 1044.) We review a trial court's limitations on closing argument to the jury for an abuse of discretion. (See *People v. Benavides* (2005) 35 Cal.4th 69, 100.)

After the defense rested, counsel asked the trial court to permit argument that proof beyond a reasonable doubt means proof to a "near certainty." The prosecution objected and the court denied defense counsel's request.

California law imposes a duty on the trial court to instruct the jury in a criminal case on the presumption of innocence and the prosecution's burden of proving guilt beyond reasonable doubt. This burden of proof is controlled by Penal Code section 1096, the substance of which has been incorporated into the standard reasonable doubt instructions, CALJIC No. 2.90 and CALCRIM No. 220. Tracking the language of Penal Code section 1096, the standard instructions describe the requirement of proof beyond a reasonable doubt, and provide the legislatively approved definition of reasonable doubt. The standard instructions satisfy the trial court's obligation to instruct on these principles, and it is not error to refuse to instruct that the jury must be persuaded to a near certainty. (*People v. Wade* (1971) 15 Cal.App.3d 16, 25-26; see also *People v. Aranda* (2012) 55 Cal.4th 342, 353-354; *People v. Ramos* (2008) 163 Cal.App.4th 1082, 1088; *People v. Campos* (2007) 156 Cal.App.4th 1228, 1239.) Moreover, courts have cautioned against any elaboration or attempt to clarify or improve the language of the standard instructions. (*People v. Johnson* (2004) 119 Cal.App.4th 976, 986; *People v. Castro* (1945) 68 Cal.App.2d 491, 497.)

Marks points out that proof beyond a reasonable doubt is considered the equivalent to "a near certainty." (*People v. Hall* (1964) 62 Cal.2d 104, 112; *People v. Wade, supra,* 15 Cal.App.3d at p. 26.) We do not dispute this assertion or conclude that it would have been error if the trial court had permitted the argument requested by Marks.

In light of authority that CALCRIM No. 220 is a complete and accurate statement of the law and authority cautioning against elaboration, however, we conclude that the trial court did not abuse its discretion or otherwise err in its ruling.

The judgment is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

David M. Hirsch, Judge

Superior Court County of Ventura

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