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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

MIGUEL GARVEY MUNOZ,

Defendant and Appellant.

B237654

(Los Angeles County Super. Ct.
No. KA090131)

APPEAL from a judgment of the Superior Court of Los Angeles County.

Mike Camacho, Judge. Affirmed.

John Doyle, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, and Mary Sanchez and Louis W. Karlin, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Miguel Garvey Munoz appeals his conviction following a jury trial of two counts of vehicular manslaughter while intoxicated in violation of Penal Code section 191.5, subdivision (b). Munoz's sole contention on appeal is that the trial court erred in denying his motion to suppress the statements that he made to law enforcement while being treated at a hospital without first being advised of his rights under *Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*). Because Munoz was not in custody for *Miranda* purposes at the time of his statements to the police, the trial court did not err in admitting the statements into evidence at trial. We accordingly affirm.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

This case arose out of a single-vehicle collision in which Munoz, the driver, was seriously injured, and the two passengers in the vehicle, Munoz's brother, Nathan Munoz, and their cousin, Gabriel Mejia, were both killed.¹ At the time of the collision, Munoz was 21-years-old, Nathan was 19-years-old, and Gabriel was 20-years-old. On the evening of October 1, 2009, Munoz and Nathan visited Gabriel at his home. The three young men played video games and watched television as they drank 12-ounce cans of Tecate beer. Later that night, they left to go to a nightclub in Nathan's 1974 yellow Camaro. After being denied entry into the club by security personnel, the group left the club in Nathan's Camaro with Munoz driving, Gabriel sitting in the front passenger seat, and Nathan sitting in the rear passenger seat directly behind Munoz. A few minutes later, the Camaro crashed directly into a palm tree across the street from the club.

Both Nathan and Gabriel died from multiple traumatic injuries sustained in the collision. Munoz was seriously injured in the collision and was unconscious at the scene. He was transported by ambulance to the emergency room at County U.S.C. Hospital where he was admitted at approximately 1:30 a.m. on October 2, 2009. He was observed to have altered consciousness upon his admission. A registered nurse at the hospital drew

¹ For clarity and convenience, and not out of disrespect, we shall refer to the two victims by their first names.

a sample of Munoz's blood for diagnostic purposes at approximately 1:40 a.m. and sent it to the hospital's laboratory a few minutes later. According to the results of the hospital's blood chemistry analysis, Munoz's blood alcohol concentration at 1:43 a.m. was between 0.15 and 0.16 percent.

West Covina Police Officer Mark Akiyoshi initially responded to the scene of the collision. He then went to County U.S.C. Hospital to conduct a follow-up investigation. At approximately 3:00 a.m., Officer Akiyoshi interviewed Munoz who was lying on a gurney in an exam room. At times, medical personnel were also present in the room. Upon entering the exam room, Officer Akiyoshi observed that Munoz was awake and able to converse. He appeared to be in some discomfort, but not in pain. He was wearing an oxygen mask which he removed on his own prior to the interview. He also had an intravenous bag and a catheter, which he attempted to remove at some point during the interview. Officer Akiyoshi immediately noticed the smell of alcohol on Munoz's breath, but did not observe Munoz to be under the influence of narcotics at that time. Munoz did not appear to have any difficulty understanding or answering the officer's questions.

Officer Akiyoshi began the interview by asking Munoz if he knew what had happened. Munoz responded that he did not remember, but he did recall that he was coming from the nightclub. When asked how much he had to drink, Munoz answered that he had two tall cans of Tecate. When asked who owned and was driving the car at the time of the collision, Munoz indicated that the car belonged to his brother, Nathan, and that Munoz was driving because Nathan had too much to drink. Munoz also said that his cousin, Gabriel, was with them in the car. The interview with Officer Akiyoshi lasted between one and two minutes.

At Officer Akiyoshi's request, a registered nurse at the hospital drew a sample of Munoz's blood for forensic purposes at 6:24 a.m. which was submitted for analysis to the Los Angeles County Sheriff's Department. According to the results of the sheriff's department's blood chemistry analysis, Munoz's blood alcohol concentration at 6:24 a.m. was 0.07 percent.

West Covina Police Detective Huston Clements and his partner conducted an audio recorded interview with Munoz at the hospital between 8:00 and 8:30 a.m. that morning. During the interview, Munoz was lying on a gurney in the emergency room and being treated by hospital staff. He was attached to monitors and medical personnel occasionally walked in and out of the area as the detectives interviewed him. Munoz was cooperative during the interview and appeared to understand the questions that were asked. He did not appear to be under the influence of alcohol or narcotics at that time.

Munoz told the detectives that he, Nathan, and Gabriel went to a nightclub prior to the collision, but security would not allow Nathan or Gabriel into the club. Earlier in the evening, the group was at Gabriel's house. Munoz had one can of Tecate beer and Gabriel may have had some beer as well, but Nathan did not drink any alcohol. After the group was denied entry into the club, they went back to Nathan's car and began heading home. Munoz could not recall why he was driving the car instead of Nathan or what caused the collision. He also did not remember where the collision occurred, but believed he had been driving 35 to 40 miles per hour. He denied any marijuana use or history of medical problems. When Munoz indicated to the detectives that his head was "ringing," they promptly terminated the interview and asked him if he wanted to see the nurse. Detective Clements arrested Munoz seven months later on May 6, 2010.

DISCUSSION

On appeal, Munoz challenges the trial court's denial of his pretrial motion to suppress the statements that he made to Officer Akiyoshi and Detective Clements while confined in the hospital in the hours following the collision. Munoz contends that his statements to law enforcement during each of these interviews should have been excluded because he was subjected to a custodial interrogation without first being advised of his *Miranda* rights. We conclude that Munoz's claim fails because he was not in police

custody at the time of the investigatory interviews, and thus, there was no constitutional obligation to advise Munoz of his *Miranda* rights prior to obtaining his statement.²

The requirements of *Miranda* are well-recognized. A suspect may not be subjected to a custodial interrogation unless he or she has been advised of and knowingly and intelligently has waived the right to remain silent, to the presence of an attorney, and to appointed counsel if indigent. (*People v. Dykes* (2009) 46 Cal.4th 731, 751; *People v. Davis* (2009) 46 Cal.4th 539, 585.) Custodial interrogation has two components. First, the person being questioned must be in custody. Second, the questioning must constitute an interrogation. (*People v. Mickey* (1991) 54 Cal.3d 612, 648; *People v. Mosley* (1999) 73 Cal.App.4th 1081, 1088.) “The phrase ‘custodial interrogation’ is crucial. The adjective [custodial] encompasses any situation in which ‘a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.’ [Citation.]” (*People v. Mickey, supra*, at p. 648.) Because the *Miranda* advisements “protect the individual against the coercive nature of custodial interrogation, they are required “‘only where there has been such a restriction on a person’s freedom as to render him ‘in custody.’” [Citations.]” (*J. D. B. v. North Carolina* (2011) 564 U.S. ___, ___ [131 S.Ct. 2394, 2402, 180 L.Ed.2d 310, 322].) “Absent ‘custodial interrogation,’ *Miranda* simply does not come into play. [Citations.]” (*People v. Mickey, supra*, at p. 648.)

Whether a person was in custody for *Miranda* purposes is an objective test. (*People v. Leonard* (2007) 40 Cal.4th 1370, 1400; *People v. Stansbury* (1995) 9 Cal.4th 824, 830.) “[T]he pertinent inquiry is whether there was “‘a “formal arrest or restraint on freedom of movement” of the degree associated with a formal arrest.’” [Citation.]” (*People v. Leonard, supra*, at p. 1400.) Where no formal arrest has taken place, the relevant question is “whether a reasonable person in defendant’s position would have

² In his motion to suppress his pre-*Miranda* statements to the police, Munoz also argued to the trial court that the statements were involuntary due to his altered state of consciousness upon admission to the hospital. Munoz later withdrew that argument during trial and does not raise it on appeal.

felt he or she was in custody.” (*People v. Stansbury*, *supra*, at p. 830.) An officer’s undisclosed focus of suspicion is “not relevant” to the custody determination. (*Stansbury v. California* (1994) 511 U.S. 318, 326.) “[I]t is the objective surroundings, and not any undisclosed views, that control the *Miranda* custody inquiry.” (*Id.* at p. 325.)

Determining whether a defendant was in custody within the meaning of *Miranda* is a mixed question of law and fact. (*People v. Ochoa* (1998) 19 Cal.4th 353, 401.)

“When reviewing a trial court’s determination that a defendant did not undergo custodial interrogation, an appellate court must ‘apply a deferential substantial evidence standard’ [citation] to the trial court’s factual findings regarding the circumstances surrounding the interrogation, and it must independently decide whether, given those circumstances, ‘a reasonable person in [the] defendant’s position would have felt free to end the questioning and leave’ [citation].” (*People v. Leonard*, *supra*, 40 Cal.4th at p. 1400.)

Munoz asserts that he was in custody for *Miranda* purposes during the interviews with Officer Akiyoshi and Detective Clements because he was not free to leave the hospital due to his need for medical treatment for his injuries. However, the relevant inquiry is not whether Munoz was physically confined to his hospital bed at the time of the officers’ questioning, but whether a reasonable person in his position would have felt that he or she was in custody. Contrary to Munoz’s contention, custody for *Miranda* purposes means police custody. Indeed, as the United States Supreme recently observed in discussing the rationale for *Miranda*’s custody requirement, “[a]ny police interview of an individual suspected of a crime has ‘coercive aspects to it.’ [Citation.] Only those interrogations that occur while a suspect is in *police custody*, however, ‘heighte[n] the risk’ that statements obtained are not the product of the suspect’s free choice. [Citation.]” (*J. D. B. v. North Carolina*, *supra*, 131 S.Ct. at p. 2401, italics added.) Where, as here, no formal arrest has been made at the time of the questioning, there must be a restraint on the freedom of movement ““““of the degree associated with a formal arrest.”””” (*People v. Leonard*, *supra*, 40 Cal.4th at p. 1400.) Hence, it is not the mere absence of physical mobility in the presence of the police that triggers the protections of *Miranda*. Rather, it is the imposition of a restraint on a person’s freedom of movement by the police.

In *People v. Mosley*, *supra*, 73 Cal.App.4th at pp. 1088-1091, for instance, the defendant sought to exclude his pre-*Miranda* statements to law enforcement made while being treated in an ambulance for a gunshot wound. As the paramedics attended to the defendant, the investigating officer asked him about the circumstances surrounding his injury and the defendant's answers incriminated him in the shooting. (*Id.* at pp. 1085-1086.) The Court of Appeal held that the officer's questioning of the defendant in the ambulance was not a custodial interrogation requiring the advisement of *Miranda* rights. (*Id.* at pp. 1090-1091.) As the court reasoned, "[a]ny restraint of defendant's freedom of action was caused by the need to treat his gunshot wound, which was still bleeding and was actively being treated during the interview. He had not been placed under arrest because the police did not know what had happened that caused him to be shot. . . . Additionally, we note that the interview was in view of and in the presence of medical personnel who continued to treat defendant during the brief interview. We also note that the questioning was not accusatory or threatening, that defendant was not handcuffed, that no guns were drawn, and that defendant was about to be transported to a hospital and not to a police station or jail." (*Id.* at p. 1091.) The court thus concluded that, based on the totality of the circumstances, a reasonable person in the defendant's position would not have believed he or she was in custody. (*Ibid.*; see also *People v. Milham* (1984) 159 Cal.App.3d 487, 501 [defendant questioned by police while in ambulance at scene of traffic accident was not in custody for *Miranda* purposes because "[h]e may well have been unable physically to leave the scene, but not by virtue of police conduct"].)

Similarly, in *United States v. Martin* (9th Cir. 1985) 781 F.2d 671, 673, the Ninth Circuit held that *Miranda* advisements were not required when a defendant was interviewed by the police while being treated in the hospital for injuries sustained in an explosion at his home. In rejecting the defendant's argument that he was in custody because he was not free to leave the hospital, the appellate court reasoned that "[t]here are no facts to indicate law enforcement officials were in any way involved in [the defendant's] hospitalization or did anything to extend [his] hospital stay and treatment. In such circumstances, the district court correctly found [the defendant] was not 'in

custody,’ and that the procedural safeguards outlined in *Miranda* were not required before law enforcement personnel spoke with [him.>] (*Ibid.*; see also *Wilson v. Coon* (8th Cir. 1987) 808 F.2d 688, 690 [*Miranda* advisements were not required where defendant was questioned by police at scene of traffic accident while being physically restrained by medical personnel because “[d]etention for a medical examination is not a situation that a reasonable person would find inherently coercive in the sense required by *Miranda*”].)

In this case, we conclude that Munoz was not in custody for *Miranda* purposes when he was interviewed by Officer Akiyoshi and later by Detective Clements while being treated in the hospital. It is undisputed that each interview took place in the emergency room of a hospital open to the public. Medical personnel continued to intermittently attend to Munoz during the interviews and the officers made no attempt to preclude them from doing so. Although Munoz was confined to a hospital bed and attached to medical equipment, there is no evidence that any officer restrained Munoz or ordered the hospital staff to restrain him. Rather, Munoz’s physical confinement was solely for the purpose of rendering medical care to him. Any restraint on Munoz’s freedom of movement was therefore caused by his need for treatment for his injuries, and was not done at the direction of the police.

The record also reflects that Munoz was never arrested or handcuffed at any time during the interviews. Additionally, there is no evidence that any of the officers ever drew their weapons or otherwise employed any threatening or intimidating tactics in their questioning. Officer Akiyoshi was the only officer present in the room in the first interview and Detective Clements and his partner were the only officers present in the second interview. Officer Akiyoshi’s interview with Munoz lasted less than two minutes and consisted of six basic investigatory questions about what happened in the collision. Detective Clements’s interview later that morning was more substantive, but likewise was comprised of standard inquiries in a traffic accident investigation. The questions posed to Munoz were open-ended and were neither aggressive nor accusatory in nature. When Munoz indicated in the second interview that his head was ringing, Detective

Clements promptly stopped the interview and asked Munoz if he needed to see a nurse. The mere fact that Munoz's freedom of movement was limited by his need for medical care did not transform the officers' investigative interviews into a custodial interrogation.

In sum, based on the totality of the circumstances, a reasonable person in Munoz's position would not have believed that he or she was in custody when questioned by Officer Akiyoshi or Detective Clements. Because the officers were not required to advise Munoz of his *Miranda* rights prior to interviewing him at the hospital, his statements to the police during such interviews were admissible at trial. The trial court accordingly did not err in denying Munoz's motion to suppress his pre-*Miranda* statements to the police.

DISPOSITION

The judgment is affirmed.

ZELON, J.

We concur:

PERLUSS, P. J.

WOODS, J.