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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

HENRY ANTHONY AYALA,

Defendant and Appellant.

B233786

(Los Angeles County
Super. Ct. No. VA117810)

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

Daniel S. Murphy, Judge. Affirmed.

Elana Goldstein, 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, Assistant Attorney General, James William Bilderback II and Alene M. Games, Deputy Attorneys General, for Plaintiff and Respondent.

BACKGROUND

A February 7, 2011 information charged Appellant Henry Anthony Ayala with carjacking (Pen. Code, § 215, subd. (a)), with an enhancement of personal use of a firearm (Pen. Code, § 12022.53, subd. (b)), and allegations of four prior felony convictions (Pen. Code, § 667.5, subd. (b)).¹ Ayala pleaded not guilty and denied the allegations.

At Ayala's trial the prosecution presented evidence that Jerry Kinkle left his workplace in Downey at about 1:30 a.m. on December 7, 2010, stopped briefly at his home, ate at a Denny's restaurant, then drove to a nearby park to relax and read a newspaper. When another car pulled in front of his car, he thought the car belonged to one of his co-workers. But as he began to step from his car, a man came from the driver's side of the other car, holding a handgun to his head and telling him to keep his face down. The man wore a red hat with the bill pushed down in front, and Kinkle was unable to see the man's face. He later told the police that the man was light-skinned, but he could not see the man's features and could not determine the man's ethnicity.

The man forced Kinkle to the ground next to his car, stripped him of his shoes, pants, and wallet, and told Kinkle he "knows where I live" and would come and shoot him if Kinkle were to say anything to anyone. While he was face down on the ground next to his car, he heard scuffling in his car. The man then jumped into Kinkle's car, and both cars sped away. Kinkle ran about a mile back to his workplace, where he called the police.

Responding to a call about a suspicious vehicle the next morning at about 4:00 a.m., the police found Kinkle's stolen car parked next to a gas pump with Ayala asleep in the driver's seat. They also found a loaded semiautomatic handgun between the driver's seat and the center console. They arrested Ayala.

¹ All further statutory references are to the Penal Code unless otherwise specified.

In a videoed interview at the police station, Ayala was read warnings and waived his rights under *Miranda v. Arizona* (1966) 384 U.S. 436. After a number of evasive responses to the officers' questions, Ayala told them he had taken Kinkle's car by force using his handgun, and that after taking Kinkle's wallet he had said "I know where you live," indicating he would come after Kinkle if he were to report the incident. Ayala said that he had been "doped out, tripped out," that he had been using methamphetamine for about a month.

During the time that Ayala was alone before the interview, he appeared to be sleepy, and was nodding off. And during the interview, Ayala had slurred speech, spoke under his breath, was slow to respond, and on a number of occasions appeared to be falling asleep. An officer present during the interview testified that despite Ayala's demeanor during the interview, he did not believe that Ayala was under the influence of a drug.

Ayala testified in his own defense. He admitted three prior convictions involving vehicle theft. He said that when he was arrested on December 8, 2010, and when he was interviewed following his arrest, he was under the influence of methamphetamine, and he remembered nothing of those events. He said that when he was arrested he had neither a red hat, nor Kinkle's wallet. He said he had borrowed the car in which he was arrested from someone named John at a dope house. He had obtained the gun, which he used for protection during his drug transactions, from his cousin Frank; he later learned it was registered to Frank Hernandez. But he denied any involvement in carjacking Kinkle.

The jury found Ayala guilty, and found the use-of-weapon allegation to be true. Ayala admitted the prior convictions. The trial court denied probation, sentencing Ayala to 19 years in prison, with 218 days of presentence custody credits (190 days of actual custody plus 28 days of conduct credit). It ordered a \$200 restitution fine (§ 1202.4), a \$40 court security assessment (§ 1465.8), a \$38 crime prevention fine (§ 1465.7), and a \$30 criminal conviction assessment (Gov. Code, § 70373). It imposed, and stayed, a \$200 parole revocation fine (§ 1202.45), and ordered a \$3,130.14 civil judgment in the

victim's favor. On June 16, 2011, Ayala filed a timely appeal from the judgment. (§ 1237.)

Ayala contends on appeal that evidence of his custodial admissions should have been excluded, because his *Miranda* waiver was involuntary due to his intoxication at the time of the police interview.² We affirm the judgment.

DISCUSSION

The Fifth and Fourteenth Amendments to the United States Constitution, and Article I, section 15 of the California Constitution, prohibit a defendant in a criminal proceeding from being compelled to be a witness against himself. Before a defendant's custodial statements may be admitted against him at trial, they must be shown to have been made voluntarily after he was advised of his right to remain silent and to have an attorney present (*Miranda v. Arizona*, *supra*, 384 U.S. 436, 475), and to have been made “‘with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.’” (*People v. Clark* (1993) 5 Cal.4th 950, 986, quoting *Moran v. Burbine* (1986) 475 U.S. 412, 421.)

The burden is on the prosecution to prove by a preponderance of the evidence that a confession was voluntary. (*People v. Whitson* (1998) 17 Cal.4th 229, 248.) In reviewing the trial court's determination of the issue, “the reviewing court must ‘accept the trial court's resolution of disputed facts and inferences, and its evaluations of credibility, if supported by substantial evidence,’ but ‘independently determine[s] from the undisputed facts and the facts properly found by the trial court whether the challenged statement was illegally obtained.’” (*People v. Gonzalez* (2005) 34 Cal.4th 1111, 1125.)

A defendant's custodial statement is involuntary if it is not “‘the product of a rational intellect and a free will.’” (*Mincey v. Arizona* (1978) 437 U.S. 385, 398; *People*

² Although in ruling on admissibility the trial court viewed the entire interview, only portions of the video recording were played for the jury. A transcript of the interview (as edited for the jury) was admitted into evidence as Exhibit 8, and is reproduced in the Clerk's Transcript. The DVD was marked as Exhibit 8A. At the defendant's request, an additional eight-minute portion of the video recording was played during the cross-examination of one of the interviewing officers.

v. Clark (1993) 5 Cal.4th 950, 988 [involuntary waiver of *Miranda* rights is a product of government coercion].) A defendant's custodial statement is not voluntary if it is not "the product of a rational intellect and a free will." To determine whether a defendant's statement and his waiver of rights is voluntary, a trial court examines "whether a defendant's will was overborne' by the circumstances surrounding the giving of a confession." (*Dickerson v. United States* (2000) 530 U.S. 428, 434.) The trial court found that Ayala had made a knowingly free and voluntary waiver of his *Miranda* rights, and ruled that his custodial statements were admissible into evidence.

A defendant's voluntary ingestion of drugs does not preclude a court from determining that his waiver of *Miranda* rights was knowing and voluntary. Such a determination is upheld where the evidence shows that despite his ingestion of drugs at some point before his arrest, there is nothing in the record to indicate that the defendant did not understand his rights and the questions posed to him. (*People v. Breaux* (1991) 1 Cal.4th 281, 301; *People v. Jackson* (1989) 49 Cal.3d 1170, 1189.)

After viewing the video recording of the interrogation, the trial court identified the "critical question" as whether Ayala's "ability to reason, comprehend, or resist was so disabled that he was incapable of free and [rational] choice." The court found that although Ayala was nodding sleepily before the interview, once the interview began "he answered the questions and was responsive to the officers." That conclusion was supported not only by the court's own review of the interview video recording, but also by the testimony of an officer who was present at the interview. The officer testified that although Ayala seemed to be sleepy at the outset of the interview, and his speech was sometimes slurred, Ayala appeared to understand all the questions he was being asked, and he did not feel that Ayala was intoxicated or so under the influence of drugs that he could not care for himself. The court noted also that it inferred from Ayala's record of four previous incidents of custody that Ayala was not "a neophyte to these proceedings." "In fact, from the exchanges of himself and the officers, it appears he was very comfortable in the proceedings and understood what was going on and how the interview and/or interrogation was to proceed."

Here, as in other cases, the trial court was justified in determining that Ayala's waiver of *Miranda* rights was knowing and voluntary under the totality of circumstances. (*People v. Breaux, supra*, 1 Cal.4th at p. 301 [despite defendant's history of heroin and cocaine abuse, pain, and morphine injection two hours earlier, record does not indicate inability to understand questions and waive *Miranda* rights]; *People v. Jackson, supra*, 49 Cal.3d at p. 1189 [nothing in record to indicate that defendant did not understand the questions posed to him]; see also *People v. Perdomo* (2007) 147 Cal.App.4th 605, 617-618 [narcotic pain medications did not render defendant's statement involuntary where he responded appropriately to the questions asked]; *People v. Taylor* (1980) 112 Cal.App.3d 348, 361 [statements to police were voluntary despite being "heavily under the influence of heroin" where defendant "never appeared confused and answered directly, coherently and in detail"].)

The trial court's determination that Ayala's ability to reason, comprehend, or resist was not so disabled that he was incapable of free and rational choice is supported by the record. (*People v. Gonzalez, supra*, 34 Cal.4th at p. 1125.) We therefore "accept the trial court's resolution of disputed facts and inferences, and its evaluations of credibility," and conclude that the evidence of Ayala's custodial interrogation was legally obtained. (*Ibid.*)

DISPOSITION

The judgment is affirmed.

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CHANEY, J.

We concur:

MALLANO, P. J.

ROTHSCHILD, J.