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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

KEVONTRE LAMONT HALCROMB,

Defendant and Appellant.

B242970

(Los Angeles County
Super. Ct. No. SA080323)

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

Marsha N. Revel, Judge. Affirmed.

Margaret E. Dunk, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Kevontre Lamont Halcromb was charged by information with second degree robbery in violation of Penal Code section 211. The information also alleged that appellant personally used a handgun, and that a principal in the robbery was armed with a handgun, within the meaning of Penal Code sections 12022.53, subdivision (b), and 12022, subdivision (a)(1), respectively.

A jury found appellant guilty of robbery, but found the gun allegations to be not true. Appellant was sentenced to the mid-term of three years in state prison.

Appellant appeals his robbery conviction. Finding no error, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On the night of March 19, 2012, Jonathan Tam was sitting on the stairs outside his West Hollywood apartment, playing with his phone and smoking a cigarette, when a man came running up to him and pointed a semi-automatic handgun in his face. The man grabbed the phone out of Tam's hand and repeatedly punched him in the face.

A second person then came onto the stair landing, punched Tam in the face, rifled through his pockets, and took his keys and cigarettes. After the two men took everything Tam had on him, one of them punched him again and they ran off together.

Tam immediately reported the robbery to the police. Shortly thereafter, a Sheriff's deputy drove Tam to a field show-up within a mile of his apartment. Two males were individually brought out into the spotlight of multiple squad cars. Tam identified appellant as the robber with the gun who first approached him and took his phone, and codefendant William Hanley as the robber who went through his pockets and took his keys and cigarettes.

Before trial, appellant moved to exclude a statement he gave to police while in custody following his arrest, arguing that it was inadmissible pursuant to *Miranda v. Arizona* (1966) 384 U.S. 436. Appellant asserted three theories to bar the admission of the statement at trial: First, because he was under the influence of drugs and alcohol, he was unable to knowingly and intelligently waive his rights. Second, even if he was properly advised of his rights, he in fact did not waive them, as the statement he signed

contained no words of waiver, nor did he orally say he intended to waive his rights. And, third, even if he waived his rights, Detective Boagni may have used an impermissible two-step interrogation process by obtaining a confession before *Miranda* warnings were given and then having appellant repeat the confession for the record after the warnings were given, a procedure found violative of *Miranda v. Arizona, supra*, as explicated in *Missouri v. Seibert* (2004) 542 U.S. 600, 615.

At the hearing on appellant's motion, the court listened to Detective Boagni's recorded interview of appellant, including the detective's question, "You don't want to talk about what we talked about earlier?" Appellant maintained that this question supported his assertion that Detective Boagni elicited his confession in the morning, before he had been advised of his *Miranda* rights. Detective Boagni denied that course of events; he testified that he had two conversations with appellant, one in the morning and the second at 3:30 in the afternoon. The morning discussion, in the lock-up, was very short, consisting merely of Boagni asking appellant if he had eaten something, had made a phone call, or had any medical issues, before telling appellant that he would talk with him later, and wanted appellant to speak honestly. The afternoon conversation was in the interview room at the West Hollywood sheriff station and was recorded. Boagni advised appellant of his *Miranda* rights, and appellant signed a waiver form before he was asked any questions about the incident. Boagni's initial statement/question during the recorded interview regarding what they had talked about earlier referred to the detective's admonition to appellant to be honest.

After hearing arguments, the trial court ruled that appellant knowingly and intelligently waived his right to remain silent. Citing *People v. Whitson* (1998) 17 Cal.4th 229, 246, the court noted that appellant did not appear to be intoxicated during the interview, that his answers seemed responsive to the detective's questions and that he had waived his rights by his actions, even absent an express waiver.

The prosecution introduced the evidence summarized above through the testimony of victim Tam, Detective Boagni, and two other police officers involved in his arrest. Appellant did not testify and offered no witnesses or exhibits, instead limiting his defense

to a continuing objection to the admission of the recorded interview, argument that the gun was fake or a toy, and vigorous cross-examination of the prosecution witnesses.

As noted above, appellant was found guilty of second degree robbery, but the jury found not true both the allegations that he personally used a handgun and that a principal was armed with a handgun during the commission of the robbery.

Appellant filed a timely notice of appeal. We appointed counsel to represent him on this appeal.

After examination of the record, appellant's counsel filed an opening brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436, and requested that this court conduct an independent review of the entire appellate record to determine whether any arguable issues exist. On December 27, 2012, we advised appellant that he had 30 days in which to personally submit any contentions or issues which he wished us to consider. No response has been received to date.

We have examined the entire record and are satisfied that appellant's attorney has fully complied with her responsibilities and that no arguable issues exist. (*People v. Wende, supra*, 25 Cal.3d at p. 441.)

DISPOSITION

The judgment is affirmed.

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ARMSTRONG, J.

We concur:

TURNER, P. J.

MOSK, J.