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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.

ISRAEL J. HOWARD,

Defendant and Appellant.

B243211

(Los Angeles County
Super. Ct. No. VA122177)

APPEAL from a judgment of the Superior Court of Los Angeles County. Dewey L. Falcone, Judge. Affirmed.

Thomas Owen, 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, Linda C. Johnson and Gary A. Lieberman, Deputy Attorneys General, for Plaintiff and Respondent.

Israel Howard appeals from his convictions on three counts of robbery. He contends that some of his statements to the police were involuntary because the police promised leniency if he would talk. On that basis, he argues that the superior court prejudicially erred by allowing the video recording of his interview with the police to be played for the jury. We conclude that the police did not promise leniency and Howard's statements were voluntary, and we therefore affirm.

BACKGROUND

The information charged Howard with three counts of second degree robbery of three different victims, in violation of Penal Code section 211 (counts 1 through 3).¹ The information further alleged at to all three counts that Howard had suffered a prior serious felony conviction within the meaning of section 1192.7 or a violent felony conviction within the meaning of section 667.5, subdivision (c), or that he was required to register as a sex offender pursuant to Chapter 5.5 of Title 9 of Part 1. It further alleged that he had suffered a prior serious or violent felony conviction or juvenile adjudication within the meaning of section 1170.12, subdivisions (a) through (d), and section 667, subdivisions (b) through (i), and one serious felony conviction within the meaning of section 667, subdivision (a)(1).

Howard pleaded not guilty and denied the allegations. A jury convicted him on all three counts. Howard then waived his right to jury trial on the prior conviction allegations. The allegations were tried to the court, which found them true.

The court sentenced Howard to 15 years in prison, calculated as follows: the mid-term of three years as to count 1, doubled pursuant to subdivisions (a) through (d) of section 1170.12, plus a consecutive sentence of five years pursuant to section 667, subdivision (a)(1); plus consecutive sentences of one year (one-third of the mid-term) as to each of counts 2 and 3, doubled pursuant to subdivisions (a) through (d) of section 1170.12. The court also imposed various statutory fines and fees and credited

¹ All subsequent statutory references are to the Penal Code.

Howard with 335 days of presentence custody (291 days actual time, 44 days good time/work time). Howard timely appealed.

The evidence introduced at trial showed the following facts: Shortly before 8:30 p.m. on October 22, 2011, two black males pulled Jose Estrada from the driver's seat of his parked car and threw him to the ground; one of them held what appeared to be a gun to his head while the other went through his pockets. The assailants took his wallet and then ran to a white Cadillac with white rims, which was stopped at a nearby street corner. They entered the Cadillac and drove away. Both Estrada and a bystander witness described the robbery in their testimony, and the bystander witness testified that the Cadillac appeared to contain three black males (the two assailants plus one other). At approximately 8:40 p.m. the same night, two pedestrians were walking through an alley when a white Cadillac with white rims stopped at the end of the alley. Two males got out of the Cadillac, approached the pedestrians, and told them to put their hands on the wall. Each of the pedestrians felt what appeared to be a gun at the back of the neck. The assailants took the victims' cell phones and cash, returned to the Cadillac, and drove away. The victims ran back to one of their homes and called 911.

At approximately 9:00 p.m., a police officer saw a car that matched the description of the car used in the last two robberies. The officer pulled over the car. After the car stopped, the right rear passenger door swung open, and Howard got out of the car and ran. Police officers pursued him on foot and arrested him in a nearby alley. The police apprehended two other males who had remained inside the car. Upon searching the car, police found a BB gun that resembled a Beretta handgun and also a lighter that resembled a handgun. They also found the cell phone of one of the victims.

Of the two males who had stayed in the car, one pleaded guilty or no contest to the three robbery charges and agreed to testify in exchange for receiving probation. He testified that he was the driver of the Cadillac and that Howard and the third individual were the ones who had gotten out of the car to commit the robberies.

DISCUSSION

When interrogated in police custody, Howard admitted that he was in the car and that he was the one who fled on foot when the car was pulled over. He denied that he was one of the individuals who got out of the car and committed the robberies. The video recording of the interview was played for the jury at trial. Howard argues that part of his confession was erroneously admitted because it was involuntary, and he argues that the error was prejudicial. We disagree.

The police advised Howard of his *Miranda* rights at the start of the interrogation, and he said that he understood them. Shortly thereafter, the police asked him, “Whose car were you guys in?” He replied, “Um, I don’t know exactly whose car it is, but it’s . . .”, and the police then asked, “Who was driving the car?” He replied, “Um. Skinny? I don’t really know his name at all.” Having thus obliquely admitted that he was in the car, Howard next admitted that he ran from the car. He was then asked, “Okay why did you run from the cops?” Howard answered, “I ran because, you know, I’m doing pretty okay. I—you know, I’m just in this situation and I was just asked to do a favor, take one for the team. I mean, you know, I can run, obviously, you know, so.”

Howard went on to say that he “was just at the wrong place at the wrong time.” When asked to explain, he said, “I was just basically in the position, you know, which is I was just asked to tag along—you know, just be there. I didn’t—I didn’t do anything.” He went on to say that he thought the police pulled the car over somewhere between 9:00 and 9:30, but he had been in the car since “around 8:40 or 8:40-ish.” He added that between the time he got in the car and the time it was pulled over, nothing happened. (“Nothing. I was just riding around with them.”) Asked why he ran if he had not done anything, he answered that he was “you know, scared,” “[s]cared that I’m going to be—of course—tied to the stuff that’s already happened.” But when the police then said Howard “obviously [knew] what happened,” he said, “No, I don’t.”

A bit later, the police asked, “How did you end up in that white Cadillac?” Howard answered, “Getting ready to—maybe, maybe—break the law, maybe.” He then added, “There’s no crime against that—yet.” The police responded, “No, raise a little

hell?” Howard added, “Maybe.” When asked whether he robbed anyone that day, Howard answered, “No.” When asked whether he saw any of his “buddies” rob anyone that day, he answered, “We made various stops . . .” but when pressed for an answer, he said, “I didn’t see—I didn’t see or do anything—no.” He also said that he did not get out of the car when it made its “various stops.”

After some further discussion, Howard asked, “Is robbery still robbery when you didn’t get out the car, okay? But you—is accessory a robbery, still, to them?” The police answered, “It[’]s different—different penalties. Different penalties, but I don’t know what you saw because right now what we got is you’re doing the robberies, so someone else [unintelligible] and you want the right person to go down for this. You don’t want somebody—you don’t want to go down for somebody else’s shit. [¶] So if you’re telling me that somebody else did this shit, then tell me, so that I can—if you’re innocent in that aspect of it—and you’re saying accessory to robbery that’s totally different than being the main guy that does it. But we need to know the truth. If it wasn’t you I want to know who did it. And what happened. That’s what I’m telling you. [¶] Give me your side of the story because we could be wrong. We could be sitting here with people telling us this and the whole time you may be telling us the truth.” Howard responded, “I want to know pretty much what happened until that time when I got picked up driving around. Sometimes I drove, sometimes Skinny drove. Whatever. Sometimes D, Darnell, sometimes he drove—sometimes. And pretty much we just made different stops. I never once got out of the car. . . . I never got out of the car. I was just basically the guy if I saw anything coming, basically honk the horn.” The exchange then continued as follows:

Detective: “Okay so who was holding people at gunpoint?”

Howard: “I don’t know. I’m the guy that basically just looking out—looking for whatever.”

Detective: “You’re the lookout.”

Howard: “I was just in the car, pretty much.”

Detective: “Who was holding people at gunpoint?”

Howard: "I didn't—I don't see—I don't see any of that. They basically left the car and whatever happened, happened, and then, you know, you know, basically looking at my watch and whenever time is up I'm like you know let's go."

When pressed on whether he was the lookout, Howard said, "I'm not saying I'm a lookout, though. I'm not saying that." But he did then confirm that he was "staying in the car" and "being watchful, looking out." When the police summarized, "you're saying you had no part in [the robberies] other than that you were just a lookout and a driver," Howard answered, "Yes." "That's your story?" "Yes." "That's your story and you're sticking to it?" "Yes." Howard went on to admit that when the police pulled over the car, one of the other people in the car tried to give him "the gun" (which he had not seen before then) and "a bunch of money" and told him to "take one for the team," but he refused to take the gun and money.

Finally, when the police tried to find out whose idea it was to commit the robberies, Howard said that he "planned on just hanging out with them for the night," and then the following exchange occurred:

Howard: "It didn't happen like—basically we pulled over and, you know, in the front seat, and you know, if anything you see one time or whatever, if you see anybody looking or anything like that then you honk the horn and stuff, and you know what I'm saying, like we'll break you off, and all that sort of stuff."

Detective: "Break you off."

Howard: "Like, we'll take care of you, you know?"

Detective: "Okay, so they're telling you they're going to give you—they're going to take care of you financially?"

Second detective: "They're going to give you a cut, they're going to give you a cut."

Howard: "Yeah, but not as much as . . ."

Second detective: "Of course."

Detective: "They're going to take care of you."

Howard: ". . . because I'm not putting in muscle, but I'm still there."

Detective: “Right, but you’re still looking.”

On appeal, Howard argues that when the police told him that there were “different penalties” for being a mere accessory rather than being one of the robbers, the police’s statements constituted an offer of leniency that rendered Howard’s statements thereafter involuntary. According to Howard, the police “implied [Howard] would be treated less severely as an accomplice if [he] explained his involvement with the robberies,” and the police’s statements “plainly constituted a promise of leniency in exchange for telling [Howard’s] side of the story.” We disagree.

The police made no promises to Howard, and they did not offer him leniency if he would tell them his role in the robberies or his side of the story. Howard asked the police, “is accessory a robbery, still, to them?” The police told him (incorrectly) that there were “different penalties.” In so doing, the police did not tell him that they or the prosecutor would give him favorable treatment if he talked. Rather, they told him that the law provided for different penalties depending upon his role in the crimes under investigation. The statement about “different penalties” was therefore not a coercive promise of leniency; it was “no more than an observation that ultimately proved to be incorrect.” (*People v. Benson* (1990) 52 Cal.3d 754, 780. Moreover, the statement that there were “different penalties” for accessories and perpetrators could not have had any coercive effect on Howard, because at that point in the interrogation he had already admitted to being an accessory—he had already admitted that he had been in the car and that he had fled on foot from the police when they pulled over the car because his associates asked him to “take one for the team.”

Howard’s reliance on *In re Shawn D.* (1993) 20 Cal.App.4th 200 is misplaced, because that case did involve promises of leniency if the suspect would talk. For example, the interrogating officer told the suspect that it “may make a difference” if the suspect were to “explain” what he did. (*In re Shawn D.*, at p. 215, italics omitted.) “Besides being untrue, this plainly constituted a promise of leniency in exchange for telling ‘exactly what you did.’” (*Ibid.*) The detectives who interviewed Howard made no such promises to him.

DISPOSITION

The judgment is affirmed.

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ROTHSCHILD, J.

We concur:

MALLANO, P. J.

CHANEY, J.