

NO. 68517-1-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

JESUS SABIDO,

Appellant.

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SUPERIOR COURT
KING COUNTY
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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE BARBARA MACK

BRIEF OF RESPONDENT

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A. ISSUE PRESENTED

Whether substantial evidence in the record supports the trial court's ruling that Sabido's statements to a police detective were voluntary and admissible.

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

The State charged the juvenile respondent, Jesus Sabido (dob 10/27/96), with two counts of residential burglary, one count of attempted residential burglary, and one count of theft in the third degree based on a series of events that took place in February and March 2011. CP 1-8, 15-17. A CrR 3.5 hearing on the admissibility of Sabido's statements to the police was held in February 2012 before the Honorable Barbara Mack.

At the conclusion of the hearing, the trial court ruled that Sabido's statements to the police were voluntary and admissible. CP 71-78. After the trial court's ruling pursuant to CrR 3.5, Sabido agreed to a fact-finding hearing on stipulated evidence. The trial court found Sabido guilty of two counts of residential burglary based on the stipulated evidence, and the State agreed to dismiss the attempted burglary and third-degree theft counts. CP 55-60,

66-70; RP (2/13/12) 118-29. Sabido received a standard-range disposition on each count. CP 61-64. He now appeals. CP 65.

2. SUBSTANTIVE FACTS

On March 16, 2011, Bellevue Police Officer Jan Auclair conducted an area check after receiving a report of a group of juvenile males trespassing in a yard. She located Sabido and two other juvenile males in a park adjacent to the home where the trespass was reported. RP (2/7/12) 71-72. Sabido denied that he was at the house.¹ RP (2/7/12) 73.

On March 17, 2011, Bellevue Police Detective Steven Hoover went to Sabido's residence to talk to Sabido about a report that Sabido had been seen in possession of some Chinese money that had been stolen in a recent burglary. Detective Hoover was accompanied by Lieutenant Patricelli, who spoke some Spanish.² RP (2/7/12) 12-14. Sabido was not at home when they arrived. Hoover and Patricelli spoke with Sabido's mother, father, and

¹ The trial court ruled that Sabido was not in custody during this encounter with Officer Auclair and that his statements were admissible on that basis. CP 72 (Findings of Fact Nos. 1-6); CP 77 (Conclusion of Law No. 1). Sabido has not challenged this ruling on appeal.

² Sabido's stepfather spoke both English and Spanish. Sabido's father's English skills were limited, and his mother spoke only Spanish.

stepfather, and explained that Hoover wanted to talk to Sabido about the Chinese money and the burglary. RP (2/7/12) 14-15. Sabido's parents and stepfather were cooperative, and gave Hoover consent to search Sabido's room. Hoover found nothing of evidentiary value. RP (2/7/12) 16-17.

Hoover asked Sabido's parents and stepfather if they had seen Sabido with Chinese money. They had not, but Sabido's stepfather volunteered that he had seen Sabido with "a large amount of change" about a month ago. He also told Hoover that Sabido, "Danny," and "JJ" had been stopped the previous day for trespassing in the back yard of a house. RP (2/7/12) 17. Hoover asked Sabido's parents and stepfather to call him when Sabido got home. Hoover told them something to the effect that Sabido's cooperation would be beneficial, and that it would help to get the stolen items back to "make [the victims] whole." RP (2/7/12) 18.

A while later, Sabido's stepfather called Hoover to let him know that Sabido had arrived. Hoover went back to the residence alone. RP (2/7/12) 18-19. Hoover contacted Sabido in the living room. Sabido's parents and stepfather were sitting in the dining room a few feet away. RP (2/7/12) 19. Hoover advised Sabido of

his Miranda³ rights, including the additional warnings for juveniles, from a department-issued card. RP (2/7/12) 20-22. Sabido did not ask any questions about his rights, and gave no indications that he did not understand them. RP (2/7/12) 22-23. Sabido did not invoke his right to remain silent or ask for a lawyer. RP (2/7/12) 23.

Hoover also testified that he did not make any promises or threats, and that he did not engage in coercion to induce Sabido to speak with him. RP (2/7/12) 23.

Hoover then asked Sabido about being stopped by Officer Auclair the previous day. Sabido said that he jumped the fence to get to a nearby 7/Eleven. RP (2/7/12) 24. Hoover then asked about the Chinese money. Sabido said the money belonged to someone named Luis Reyes, and that he did not know anything else about it. RP (2/7/12) 25. At that point, Sabido's parents and stepfather spoke to Sabido in Spanish. RP (2/7/12) 25. They told Sabido to cooperate and to answer Hoover's questions truthfully. RP (2/7/12) 124; RP (2/10/12) 31.

Sabido's stepfather then suggested in English that Sabido should speak with Hoover alone. Hoover and Sabido walked outside to the carport and sat at a table. RP (2/7/12) 25. Hoover

³ See Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

asked again about the Chinese money, and Sabido unhesitatingly admitted that he and his accomplices had broken into a house and took the money, a laptop computer, jewelry, and cameras.

RP (2/7/12) 26-27. Hoover then asked about the change that Sabido's stepfather had mentioned. Sabido said he had taken the change from a tanning machine at an apartment complex. Hoover asked if Sabido was willing to show Hoover where these incidents had occurred, and Sabido agreed. RP (2/7/12) 28.

Hoover called for a patrol car to drive him and Sabido to these locations. Hoover informed Sabido's parents and stepfather where they were going. Hoover also told them that he was taking Sabido to the police station to be photographed and fingerprinted, and then Hoover would bring him home. RP (2/7/12) 28.

Officer Auclair arrived in her patrol car, and she drove Sabido and Hoover to the apartment complex with the tanning machine. Next, they located the house where the Chinese money had been stolen. Then they drove to the police station, where Sabido was photographed and fingerprinted. RP (2/7/12) 30-32. On the way back to Sabido's residence, Hoover told him that he thought Sabido was involved in other burglaries, and that he would be checking Sabido's fingerprints and DNA. Upon arriving at

At the CrR 3.5 hearing, Sabido and his parents and stepfather contended that Hoover had promised them that Sabido would not be charged with a crime if he cooperated with the investigation. RP (2/7/12) 120, 155; RP (2/10/12) 6, 30. Sabido also testified that Hoover had threatened to take Sabido's "ass" to "Juvi" if he did not cooperate. RP (2/7/12) 155-56; RP (2/10/12) 155-56, 159. Sabido also contended that he told Hoover that he did not want to talk to him, but that he did so because he thought he would go to "Juvi" otherwise. RP (2/7/12) 152-53, 159. On the other hand, Hoover testified that he did not threaten Sabido or promise anything. Rather, he explained that he told Sabido something to the effect that "it would benefit you to talk to me and to cooperate with me." RP (2/7/12) 23.

The defense submitted Sabido's school records. Ex. 10. Based on these records, the defense contended that Sabido had ADHD, learning disabilities, and cognitive deficits that affected his ability to make a knowing and voluntary waiver of his Miranda rights. RP (2/13/12) 93, 95. However, Sabido admitted that he understood "most of" the Miranda warnings, that he did not ask questions about them, that he knew he had the right to remain silent, and that he answered Hoover's questions "freely."

RP (2/7/12) 152; RP (2/10/12) 55-57, 62. Sabido also admitted (after initially denying it) that he had been advised of his rights on a prior occasion. RP (2/10/12) 63-67.

Additional facts from the record will be discussed below as necessary for argument.

C. ARGUMENT

THE TRIAL COURT'S RULING THAT SABIDO'S STATEMENTS TO THE POLICE WERE VOLUNTARY AND ADMISSIBLE IS SUPPORTED BY THE RECORD AND SHOULD BE AFFIRMED.

Sabido claims that the trial court erred in ruling that his statements to Detective Hoover were voluntary and admissible. More specifically, Sabido argues that his statements were coerced and involuntary, and that the evidence did not prove that his waiver of Miranda rights was valid. Sabido's arguments should be rejected. The evidence produced at the CrR 3.5 hearing supports the trial court's findings of fact, and the court's conclusions of law are sound based on the relevant case law.

When a criminal defendant appeals a trial court's ruling under CrR 3.5, the trial court's unchallenged findings of fact are verities on appeal, and any challenged findings of fact are verities if

they are supported by substantial evidence in the record. State v. Broadaway, 133 Wn.2d 118, 131, 942 P.2d 363 (1997). The appellate court defers to the trial court's credibility determinations and its resolution of conflicts in the evidence. Id. at 134. If the record supports the trial court's conclusion that a confession is voluntary and admissible, the trial court's ruling should be affirmed. See id., at 133-34.

The Fifth Amendment to the United States Constitution provides that no person "shall be compelled in any criminal case to be a witness against himself." Article I, section 9 of the Washington Constitution provides protections against self-incrimination that are coextensive with the Fifth Amendment. State v. Unga, 165 Wn.2d 95, 100, 196 P.3d 645 (2008). Accordingly, the State bears the burden of showing by a preponderance of the evidence that a suspect has validly waived his or her Miranda rights before custodial statements will be admitted at trial. State v. Athan, 160 Wn.2d 354, 380, 158 P.3d 27 (2007).

Any determination as to whether a criminal suspect has validly waived his or her Fifth Amendment rights and has made custodial statements voluntarily is made based on a totality of the circumstances. State v. Campos-Cerna, 154 Wn. App. 702, 709,

226 P.3d 185, rev. denied, 169 Wn.2d 1021 (2010). Many factors are potentially relevant to this analysis:

Circumstances that are potentially relevant in the totality-of-the-circumstances analysis include the “crucial element of police coercion”; the length of the interrogation; its location; its continuity; the defendant’s maturity, education, physical condition, and mental health; and whether the police advised the defendant of the rights to remain silent and to have counsel present during custodial interrogation.

Unga, 165 Wn.2d at 101 (citing Withrow v. Williams, 507 U.S. 680, 693-94, 113 S. Ct. 1745, 123 L. Ed. 2d 407 (1993)). Additional considerations are relevant in cases involving juveniles:

Included in the circumstances to be considered are the individual’s age, experience, intelligence, education, and background; whether he or she has the capacity to understand any warnings given and his or her Fifth Amendment rights; and the consequences of waiving those rights.

Unga, 165 Wn.2d at 103; *see also* J.D.B. v. North Carolina, ___ U.S. ___, 131 S. Ct. 2394, 180 L. Ed. 2d 310 (2011).

“The totality-of-the-circumstances test specifically applies to determine whether a confession was coerced by any express or implied promise or by the exertion of any improper influence.”

Unga, 165 Wn.2d at 101 (citing Broadaway, 133 Wn.2d at 132, and Arizona v. Fulminante, 499 U.S. 279, 285, 111 S. Ct. 1246, 113 L. Ed. 2d 302 (1991)). In determining whether any promises or

other improper influence by the police have rendered a confession involuntary, the court must consider the totality of the circumstances and determine whether “the defendant’s will was overborne” by police conduct. Unga, 165 Wn.2d at 101-02. As the Unga court explained,

A police officer’s psychological ploys, such as playing on the suspect’s sympathies, saying that honesty is the best policy for a person hoping for leniency, or telling the suspect that he could help himself by cooperating may play a part in a suspect’s decision to confess, “but so long as that decision is a product of the suspect’s own balancing of competing considerations, the confession is voluntary.”

Id. at 102 (quoting Miller v. Fenton, 796 F.2d 598, 605 (3rd Cir. 1986)). Ultimately, the court must decide “whether [the interrogating officer’s] statements were so manipulative or coercive that they deprived [the suspect] of his ability to make an unconstrained, autonomous decision to confess.” Unga, 165 Wn.2d at 102 (quoting Miller, 796 F.2d at 605) (alterations in original).

The facts of Unga are instructive here. In Unga, a police officer suspected that the juvenile suspect had vandalized a stolen car with graffiti. After advising the juvenile of his rights, and after the juvenile initially denied vandalizing the car, the officer told the

juvenile that he would not be charged with malicious mischief if he would tell the officer about the graffiti. In response, the juvenile confessed that he had been a passenger in the stolen car, that he knew the car was stolen, and that he wrote the graffiti. Unga, 165 Wn.2d at 98-99.

The State charged the juvenile with taking a motor vehicle and vehicle prowling. The juvenile argued that his statements were coerced by the officer's promise that he would not be charged. The trial court found that the juvenile's confession was admissible because the officer's conduct did not overcome the juvenile's "will to resist," and because the juvenile had waived his Miranda rights. Id. at 99-100. The Washington Supreme Court affirmed, holding that the totality of the circumstances supported the trial court's ruling that the confession was voluntary, notwithstanding the promise not to charge the juvenile with malicious mischief. Id. at 107-12. This Court should reach the same conclusion in this case.

In this case, it was undisputed that Detective Hoover read Sabido his Miranda rights, including the additional warning for juveniles, as soon as he made contact with Sabido at his residence. RP (2/7/12) 20-22; CP 73 (Finding of Fact No. 22). Hoover testified that Sabido asked no questions about his rights, and Hoover had

no reason to suspect that he did not understand them. RP (2/7/12) 20-23; CP 76 (Findings as to Disputed Facts No. 5, 7). Hoover expressly denied that he made any threats or promises to Sabido, or that he coerced him to confess. RP (2/7/12) 23. Hoover did tell Sabido and his parents something to the effect that it would benefit Sabido if he cooperated and if he helped the police return stolen items to the victims. RP (2/7/12) 18, 24. After Sabido initially denied knowing much of anything about the Chinese money, Sabido's parents and stepfather spoke to him in Spanish and encouraged him to cooperate and to tell the truth. RP (2/7/12) 25-26; CP 73 (Findings of Fact Nos. 27, 28).

Sabido's stepfather then asked if Sabido wanted to speak to Hoover alone. Hoover and Sabido walked outside to the carport, where Sabido immediately confessed to participating in the burglary where the Chinese money had been stolen and also admitted to taking change from a tanning machine at an apartment complex. RP (2/7/12) 25-28; CP 73-74 (Findings of Fact Nos. 30-43); CP 76-77 (Findings as to Disputed Facts Nos. 9, 17).

After Sabido showed Detective Hoover the locations where he had taken the Chinese money and the change from the tanning machine, and as he was being dropped off at home, Officer Auclair

told Sabido that if there was anything else he had done he should tell Detective Hoover so he could “get it all behind him” and “start fresh.” RP (2/7/12) 82-83; CP 75 (Findings of Fact Nos. 54-57). Sabido then told Detective Hoover about an additional burglary, and he showed Hoover where and how it had occurred. RP (2/7/12) 33-36; CP 75 (Findings of Fact Nos. 58-61).

Based on the totality of the circumstances, this record supports the trial court’s ruling that Sabido’s statements were voluntary and admissible. The “promise” made by Detective Hoover (*i.e.*, that it would be beneficial if Sabido cooperated), to the extent it constitutes a promise at all, was far less explicit and potentially coercive as the promise made in Unga (*i.e.*, that the suspect would not be charged with malicious mischief). Rather, Hoover’s statements were to the effect that “honesty is the best policy for a person hoping for leniency[.]” Unga, 165 Wn.2d at 102. Officer Auclair’s statements that Sabido should “start fresh” and “get it all behind him” by being truthful are of that same nature. There was no dispute that Sabido was advised of his rights. Also, Hoover testified that Sabido asked no questions about his rights, and that Sabido gave him no reason to suspect that he did not understand them. In sum, the record supports the trial court’s

ruling that Sabido understood his rights and waived them, and that his subsequent statements were voluntary and not the product of police coercion. Accordingly, the trial court should be affirmed.

Nonetheless, Sabido argues that his statements were coerced. More specifically, he argues that Detective Hoover told him that he would not be charged with a crime if he cooperated, and that if he did not cooperate, Hoover would take him to juvenile detention. Brief of Appellant, at 16-18. But the trial court considered the conflicting testimony on this issue and expressly found that Hoover did not make these statements.⁴ CP 76 (Findings as to Disputed Facts Nos. 1, 10). The court's findings are supported by Hoover's testimony that he did not make promises or threats to gain Sabido's cooperation. RP (2/7/12) 23. Thus, the trial court's findings are supported by substantial evidence, and therefore, they are verities. See Broadaway, 133 Wn.2d at 134 (police officer's testimony was sufficient to support findings on

⁴ Sabido cites the trial court's oral finding that Hoover said "something" about "juvi" as support for his argument that Hoover threatened him. Brief of Appellant, at 17. However, the trial court further stated that "I'm not going beyond that because it is impossible to tell from the testimony." RP (2/13/12) 118. The trial court's oral finding that "something" was said about "juvi" does not support Sabido's argument that threats were made, particularly in light of the trial court's express written findings to the contrary. CP 76 (Findings as to Disputed Facts Nos. 2, 10). See State v. Bryant, 78 Wn. App. 805, 812-13, 901 P.2d 1046 (1995) (if oral ruling and written findings conflict, written findings control).

disputed facts regarding alleged coercion). The trial court should be affirmed.

Sabido also argues that the trial court erred in finding that he knowingly and voluntarily waived his Miranda rights. Sabido argues that evidence regarding his learning disabilities, his cognitive deficits, his ADHD diagnosis, and his young age established that he did not sufficiently understand his rights or the implications of waiving them. Brief of Appellant, at 18-21. These arguments should also be rejected. Again, the evidence conflicted on these points, and the trial court resolved these conflicts in favor of admissibility based on evidence in the record.

A valid waiver of Miranda rights may be made expressly by the suspect, or may be implied from the facts of a custodial interrogation. State v. Terrovona, 105 Wn.2d 632, 646, 716 P.2d 295 (1986). As the Washington Supreme Court has explained,

Implied waiver has been found where the record reveals that a defendant understood his rights and volunteered information after reaching such understanding. Waiver has also been inferred where the record shows that a defendant's answers were freely and voluntarily made without duress, promise or threat and with a full understanding of his constitutional rights.

Terrovona, 105 Wn.2d at 646-47 (footnotes omitted). Put another way, as this Court explained in a case involving a juvenile suspect, “a waiver of Miranda rights may be inferred when a defendant voluntarily discusses the charged crime with police officers and indicates an understanding of his rights.” State v. Ellison, 36 Wn. App. 564, 571, 676 P.2d 531, rev. denied, 101 Wn.2d 1010 (1984).

The United States Supreme Court has also recently reaffirmed that an express waiver is not necessary:

The Miranda rule and its requirements are met if a suspect receives adequate Miranda warnings, understands them, and has the opportunity to invoke the rights before giving any answers or admissions.

Berghuis v. Thompkins, ___ U.S. ___, 130 S. Ct. 2250, 2263, 176 L. Ed. 2d 1098 (2010). Accordingly, “after giving a Miranda warning police may interrogate a suspect who has neither invoked nor waived his or her Miranda rights.” Id. at 2264.

Sabido is correct that the school records he submitted indicated that he is on medication for ADHD, has some deficits in his learning abilities, and had been taking some special education classes for several years. Ex. 10. However, Sabido admitted during his direct testimony that he understood “[m]ost of” the

Miranda warnings, and he further admitted on cross-examination that he did not ask any questions about his rights, that he knew he had the right to remain silent, and that he had been advised of his rights after being arrested on a prior occasion. RP (2/7/12) 152; RP (2/10/12) 55, 66-67.

Regarding his issues at school, Sabido admitted that he was good at some subjects, but not others. RP (2/10/12) 63. This was borne out by his school records, which showed that he was taking some regular classes, including an advanced placement (AP) class. Ex. 10. Although Sabido was doing poorly in that class, the fact that he was taking an AP class at all is evidence supporting the trial court's ruling that Sabido's abilities were not so deficient that he was incapable of understanding his Miranda rights. RP (2/13/12) 110. Moreover, Sabido's grades in his other classes were good.⁵ Ex. 10; RP (2/13/12) 110. Additionally, as the trial court observed, the school records showed that Sabido's problems "are equal parts and maybe a little more behavioral [rather than] developmental," and that one of his main problems was that he was associating with

⁵ At the disposition hearing, Sabido told the trial court that he was doing much better in school because he was doing his homework. RP (3/1/12) 136-36.

peers who were a negative influence. Ex. 10; RP (2/13/12) 109-11. And perhaps most importantly, the trial judge had the opportunity to observe Sabido testify in court. The court concluded from firsthand observation that Sabido “speaks and understands English very well despite his issues in school.” RP (2/13/12) 108. Again, based on the totality of the circumstances, the trial court properly ruled that Sabido understood his rights, did not invoke them, and spoke to the detective voluntarily. CP 76-77 (Findings as to Disputed Facts Nos. 4-7, 11-13, 18-19).

As was true of the evidence regarding alleged police coercion, the evidence was conflicting regarding Sabido’s abilities and capacity to understand his rights and waive them. However, the trial court’s ruling that Sabido understood his rights and waived them by choosing to speak with Detective Hoover is supported by substantial evidence. Therefore, the trial court’s ruling should be affirmed on this basis as well.

D. CONCLUSION

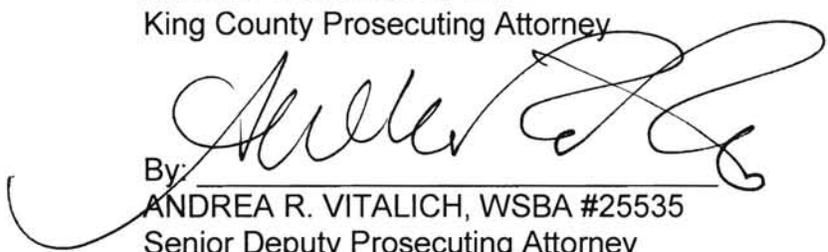
The trial court’s ruling that Sabido’s custodial statements were voluntary and admissible is supported by substantial evidence

and the applicable law. Accordingly, Sabido's convictions for two counts of residential burglary should be affirmed.

DATED this 10th day of September, 2012.

Respectfully submitted,

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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Susan Wilk, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the Brief of Respondent, in STATE V. JESUS SABIDO, Cause No. 68517-1-I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

W Brame
Name
Done in Seattle, Washington

9/10/12
Date