

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RAMON FELIX PINEDA,

Defendant-Appellant.

UNPUBLISHED

October 20, 2009

No. 286267

Oakland Circuit Court

LC No. 2007-217244-FC

Before: Davis, P.J., and Whitbeck and Shapiro, JJ.

PER CURIAM.

A jury convicted defendant Ramon Pineda of second-degree murder,¹ operating a motor vehicle while under the influence of liquor and causing death,² failure to stop at the scene of an accident resulting in serious injury or death,³ submitting a false application for a driver's license,⁴ and driving with a suspended license.⁵ The trial court sentenced Pineda to concurrent prison terms of 28 to 70 years for the murder conviction, 10 to 15 years for the OUIL causing death conviction, 40 to 60 months each for the failure to stop and false application convictions, and 93 days for the suspended license conviction. Pineda appeals as of right. We affirm.

I. Basic Facts And Procedural History

Pineda's convictions arise from an automobile accident in which his Chevrolet Camaro struck and killed a motorcyclist on August 26, 2007. At trial, 11 eyewitnesses and Pineda testified about the events of the accident. Pineda admitted driving while intoxicated and causing the victim's death, but denied that he acted with the malice necessary for second-degree murder.

¹ MCL 750.317.

² MCL 257.625(4).

³ MCL 257.617.

⁴ MCL 257.903.

⁵ MCL 257.904(1).

Testimony revealed that the victim was in front of Pineda's vehicle on Sashabaw Road when Pineda hit the victim's motorcycle, causing the motorcycle to fall to the ground. Witnesses testified that Pineda accelerated, hit the motorcycle again, and drove over the victim and his motorcycle. The victim and the motorcycle became lodged under Pineda's vehicle, and Pineda continued driving while dragging the victim and his motorcycle. It appeared to some witnesses that Pineda was attempting to flee the scene. Eventually, the victim slid under the back tires, preventing Pineda's rear-wheel-drive vehicle from proceeding. A traffic investigation expert testified that the distance between the Camaro's first skid mark and its final stopping point was 205.7 feet, and the distance between the final stopping point and its closest skid mark was 183.1 feet.

Witnesses testified that Pineda fled to a nearby strip mall parking lot. Ultimately, bystanders wrestled Pineda to the ground and restrained him until the police arrived. Subsequent testing revealed that Pineda's blood-alcohol level was 0.16 grams per 100 milliliters. A forensic toxicology expert testified that at the time of the accident, Pineda's blood-alcohol level would have been between 0.18 grams per 100 milliliters and 0.20 grams per 100 milliliters. The autopsy report concluded that the victim died from multiple blunt force injuries and that he did not have alcohol or drugs in his system.

On the day after the accident, Pineda made a statement to the police in which he admitted drinking seven or eight beers before the accident; a video recording of Pineda's interview was played for the jury. Pineda stated that he could not stop his car before hitting the victim's motorcycle because he was driving too fast, and he admitted that he hit the motorcycle three times. Pineda initially claimed that he continued driving to get over the motorcycle, but subsequently acknowledged that he did not stop because he was an illegal alien, did not have a valid driver's license, and had used an alias to obtain the license that was suspended. Pineda stated that he wanted to "get out of the problem." At trial, Pineda testified that immediately before the accident, he reached to answer his cell phone, and when he looked up and saw the motorcycle, he was not able to stop in time. He also claimed that the floor mat had gotten tangled in the brakes. Pineda stated that he felt his car drive over the motorcycle, did not see the driver when he stopped, knew the victim was stuck under his car, and accelerated to try to move over the victim and the motorcycle. According to Pineda, he fled from the scene because he was afraid of being attacked by bystanders.

II. Sufficiency Of The Evidence

A. Standard Of Review

Pineda argues that the evidence was insufficient to sustain his conviction of second-degree murder because there was insufficient evidence that he acted with malice. When ascertaining whether sufficient evidence was presented at trial to support a conviction, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a

reasonable doubt.⁶ This Court will not interfere with the trier of fact's role of determining the weight of evidence or the credibility of witnesses.⁷ "[A] reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict."⁸

B. Elements Of The Offense

The elements of second-degree murder are "(1) a death, (2) the death was caused by an act of the defendant, (3) the defendant acted with malice, and (4) the defendant did not have lawful justification or excuse for causing the death."⁹ "Malice is defined as 'the intent to kill, the intent to cause great bodily harm, or the intent to do an act in wanton and willful disregard of the likelihood that the natural tendency of such behavior is to cause death or great bodily harm.'"¹⁰ "[M]inimal circumstantial evidence will suffice to establish the defendant's state of mind, which can be inferred from all the evidence presented."¹¹

C. Applying The Legal Standards

Pineda correctly argues that "not every intoxicated driving case resulting in a fatality constitutes second-degree murder."¹² But a verdict of second-degree murder may be appropriate where the evidence demonstrates "a level of misconduct that goes beyond that of drunk driving."¹³ Here, there was evidence that after initially striking the motorcycle, Pineda did not stop but intentionally accelerated, hit the motorcycle and the victim again, and ran over the victim. Pineda acknowledged that his vehicle has a low clearance from the ground and that accelerating would injure the person under the car. Nonetheless, Pineda continued to accelerate with full knowledge of the victim's presence underneath his car and dragged the victim for more than 180 feet. According to eyewitness testimony, during the episode, Pineda was revving the engine, the car bounced on top of the victim, part of the car was off the ground because of what was underneath it, and the car's wheels were spinning. There was evidence that Pineda did not stop the car, but rather that the car stopped only because the victim's wedged body and motorcycle prevented it from proceeding.

Viewed in a light most favorable to the prosecution, the testimony was sufficient to establish that Pineda acted with malice when, after initially hitting the victim, he deliberately

⁶ *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992).

⁷ *Id.* at 514.

⁸ *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

⁹ *People v Smith*, 478 Mich 64, 70; 731 NW2d 411 (2007).

¹⁰ *People v Werner*, 254 Mich App 528, 531; 659 NW2d 688 (2002), quoting *People v Goecke*, 457 Mich 442, 464; 579 NW2d 868 (1998).

¹¹ *People v Kanaan*, 278 Mich App 594, 622; 751 NW2d 57 (2008).

¹² *Werner*, *supra* at 533; see *Goecke*, *supra* at 469.

¹³ *Goecke*, *supra* at 469.

drove over him and dragged him a great distance in an attempt to flee the scene. This evidence was certainly sufficient to sustain Pineda's conviction of second-degree murder.

III. Motion To Suppress Statement

A. Standard Of Review

Pineda argues that the trial court erred by denying his motion to suppress his statement to the police because his understanding of English was insufficient for him to voluntarily and intelligently waive his Fifth Amendment rights and because his statement was elicited in violation of his Sixth Amendment right to counsel. Whether a defendant's statement was knowing, intelligent, and voluntary is a question of law that a court evaluates under the totality of the circumstances.¹⁴ We give deference to the trial court's assessment of the weight of the evidence and the credibility of the witnesses, and we will not disturb the trial court's findings of fact unless they are clearly erroneous.¹⁵ A finding is clearly erroneous if it leaves the reviewing court with a definite and firm conviction that the trial court has made a mistake.¹⁶

B. Legal Standards

Statements of a defendant made during a custodial interrogation are inadmissible unless the defendant voluntarily, knowingly, and intelligently waived his Fifth Amendment rights.¹⁷ Whether a statement was voluntary is determined by examining police conduct, while whether it was made knowingly and intelligently depends in part upon the defendant's capacity.¹⁸ "Whether a suspect has knowingly and intelligently waived his *Miranda* rights depends in each case on the totality of the circumstances, including the defendant's intelligence and capacity to understand the warnings given."¹⁹ In *People v Cipriano*,²⁰ the Michigan Supreme Court set forth the following nonexhaustive list of factors that a trial court should consider in determining whether a statement is voluntary:

[T]he age of the accused; his lack of education or his intelligence level; the extent of his previous experience with the police; the repeated and prolonged nature of the questioning; the length of the detention of the accused before he gave the statement in question; the lack of any advice to the accused of his constitutional

¹⁴ *People v Cheatham*, 453 Mich 1, 27, 43; 551 NW2d 355 (1996).

¹⁵ *People v Sexton (After Remand)*, 461 Mich 746, 752; 609 NW2d 822 (2000); *People v Howard*, 226 Mich App 528, 543; 575 NW2d 16 (1997).

¹⁶ *People v Givans*, 227 Mich App 113, 119; 575 NW2d 84 (1997).

¹⁷ *Miranda v Arizona*, 384 US 436, 444; 86 S Ct 1602; 16 L Ed 2d 694 (1966); *People v Abraham*, 234 Mich App 640, 644; 599 NW2d 736 (1999).

¹⁸ *Howard*, *supra* at 538.

¹⁹ *Id.*

²⁰ *People v Cipriano*, 431 Mich 315, 334; 429 NW2d 781 (1988).

rights; whether there was an unnecessary delay in bringing him before a magistrate before he gave the confession; whether the accused was injured, intoxicated or drugged, or in ill health when he gave the statement; whether the accused was deprived of food, sleep, or medical attention; whether the accused was physically abused; and whether the suspect was threatened with abuse.

No single factor is conclusive.²¹

C. Applying The Standards

In this case, the trial court had an opportunity to evaluate the testimony, view the video recording of Pineda's interview, and form its own opinion regarding his English proficiency and understanding of English. Indeed, Pineda testified in English at the evidentiary hearing, so the trial court had the opportunity to personally observe his ability to understand and communicate in English. The trial court found that although English is not Pineda's native language, he undoubtedly "knows and understands the English language sufficiently to know and understand his 5th Amendment rights." As indicated previously, this Court "will defer to the trial court's superior ability to view the evidence and witnesses[.]"²²

Further, the record supports the trial court's finding that Pineda understood his rights and knowingly and intelligently waived them. Pineda's answers during the interview demonstrate a basic understanding of his rights. Throughout the interview, Pineda appeared to fully understand the officer's questions, consistently gave appropriate answers to the questions, and never stated that he did not understand the questions. The record also supports the trial court's finding that Pineda "regularly speaks and is able to communicate with others in English." Pineda is 25 years old and has been in the United States since he was 13 years old. Both Pineda and his wife testified that his wife understands very little Spanish and that they communicate exclusively in English. Pineda's wife told the interviewing officer that he spoke English "very well." The interviewing officer testified that after the police arrested Pineda, they had some "small talk" in the car and Pineda had no difficulty understanding him. Officers testified that throughout the proceedings, Pineda appeared to fully understand them, conversed in English, and appropriately responded to their questions. Two eyewitnesses testified that after the accident, Pineda appeared to understand English, commented using English, and also answered their questions in English. Viewing the totality of the circumstances, the trial court did not clearly err in finding that Pineda knowingly and intelligently waived his Fifth Amendment rights.

With regard to whether Pineda's statement was voluntary, the police conducted the interview in the afternoon on the day after the accident and it lasted approximately 30 minutes. There is no evidence that Pineda was threatened or abused, ill, intoxicated, deprived of food or drink, or under the influence of drugs. Indeed, the police offered Pineda a drink on three occasions and did not handcuff him during the interview. Although Pineda indicated that he had slept only about three hours the night before, there is no indication that he was sleep deprived

²¹ *Id.*

²² *People v Peerenboom*, 224 Mich App 195, 198; 568 NW2d 153 (1997).

such that he was not operating of his own free will. Further, the record shows that Pineda was 25 years old, and there is no indication that he had any learning disabilities or had been diagnosed with any psychological problems. Viewing the totality of the circumstances, we are not left with a firm and definite conviction that Pineda's statement was not voluntarily made.

D. Right To Counsel

"A criminal defendant has a constitutional right to counsel during interrogation."²³ When a defendant invokes his right to counsel, the police must immediately cease questioning and may not resume questioning until the defendant has consulted with counsel.²⁴ But the defendant's invocation of his right to counsel must be unequivocal.²⁵ "[I]f a suspect makes a reference to an attorney that is ambiguous or equivocal in that a reasonable officer in light of the circumstances would have understood only that the suspect might be invoking the right to counsel, our precedents do not require the cessation of questioning."²⁶

Here, the officer read Pineda his *Miranda* rights, explained them, and gave him a form listing those rights. The following exchange then occurred regarding the right to counsel:

Q. OK. Then, underneath that, there is a waiver o[f] your rights, do you understand each of these rights that I explained to you?

A. Yeah.

Q. OK. Do you want to talk to a lawyer before we ask you any questions?

A. Umm, well I don't, no I don't call for nobody, I'd like to call for my girlfriend she know one lawyer so ah yes ya know when I have time I can call one.

Q. I'm sorry.

A. I can call for the lawyer or whatever I can call right now.

Q. Alright. My question to you is though do you want a lawyer right now, or do you want to talk to us right now?

A. That's fine, it's up to you. I can.

Q. What's that?

²³ *People v Tierney*, 266 Mich App 687, 710; 703 NW2d 204 (2005) (citation omitted).

²⁴ *Id.* at 710-711.

²⁵ *Id.* at 711.

²⁶ *Id.*, quoting *Davis v United States*, 512 US 452, 459; 114 S Ct 2350; 129 L Ed 2d 362 (1994) (alteration by *Tierney*).

A. I don't mind.

Q. You don't mind talking to us?

A. Yeah.

Q. Do you waive the right to remain silent and answer many [sic] questions we may ask you? That means are you going to waive your right, and are you going to answer our questions?

A. Umhm.

Q. But remember you can stop at any time.

A. Umhm. OK.

The trial court opined that “there is no question [Pineda] . . . decided he would answer questions without counsel.” We agree that Pineda did not unequivocally invoke his right to counsel. The police are not required to cease questioning “when the suspect *might* want a lawyer.”²⁷ When Pineda stated that he would call a lawyer when he had time to do so, the officer sought clarification whether Pineda wanted a lawyer “right now,” or whether he wanted to speak to the officers without counsel present. Pineda responded that he did not mind speaking to the officers at that time, without a lawyer. Pineda’s expressed intention to contact counsel in the future did not require the cessation of questioning.²⁸

Pineda mentions that on the *Miranda* waiver form, in response to the question, “Do you want to talk to a lawyer before any questions,” the word “yes” was crossed out and replaced with the word “no.” At the evidentiary hearing, the officer explained:

I made a mistake. I meant to put no and I wrote yes, so I scratched it off and initialed it and then put in yes which is exactly what the—what’s indicated on the—the tape where he says yes.

The officer further explained:

This form here is a new form that I was not familiar with. I had been off work for a period of a little over six months and when I came back to work, we then had this form and I believe our old form required you to check yes on the three or four questions that you answered—ask the defendant when you’re questioning them on the *Miranda* issue

²⁷ *Davis, supra* at 462 (emphasis in original).

²⁸ See *People v Granderson*, 212 Mich App 673, 676-677; 538 NW2d 471 (1995) (holding that the defendant did not invoke his right to counsel where his “language reflected no *present* desire for counsel”) (emphasis added).

The trial court apparently found the officer's testimony credible, and we defer to the trial court's assessment of witness credibility.²⁹ Therefore, we conclude that the trial court did not err in denying Pineda's motion to suppress his statement.

Affirmed.

/s/ Alton T. Davis
/s/ William C. Whitbeck
/s/ Douglas B. Shapiro

²⁹ *Sexton, supra* at 752.