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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Appellee, v. JESUS RAFAEL MURO-MONGE, Appellant.	2 CA-CR 2008-0130 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20050833

Honorable John E. Davis, Judge

AFFIRMED

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V Á S Q U E Z, Judge.

¶1 After a jury trial, appellant Jesus Muro-Monge was found guilty of first-degree murder, kidnapping, and two counts of aggravated assault. In the sole issue raised on appeal, Muro-Monge contends the trial court erred in denying his motion to suppress his statements to police detectives. He maintains the detectives should have given him the *Miranda*[1] warnings in Spanish rather than English and claims, because they failed to do so, he did not "knowingly, intelligently, and voluntarily waive his *Miranda* rights." Finding no error, we affirm.

Background

¶2 We view the facts and all reasonable inferences therefrom in the light most favorable to upholding the verdicts. *See State v. Tucker*, 205 Ariz. 157, n.1, 68 P.3d 110, 113 n.1 (2003). In October 2004, S., C., and P. were sitting in a car "partying" at a trailer park when the car's battery died. They went back to the trailer where they had been earlier, looking for help. Muro-Monge and his codefendant, Antonio Carrillo, gave the car a jumpstart, and S. and C. offered to give them some of the beer they had in the car. Dissatisfied with the amount of beer C. had given them, Carrillo punctured the car's tire with his knife, and Muro-Monge attempted to stab C. S. ran away, and C. drove away in the car, leaving P. standing on the sidewalk nearby. Carrillo got into his vehicle and followed C., while Muro-Monge chased after S. C. intentionally drove into Carrillo's vehicle and fled

[1]*Miranda v. Arizona*, 384 U.S. 436 (1966).

into the trailer park on foot. S. and C., who thought P. had returned to the trailer, then fled the scene.

¶3 Muro-Monge and Carrillo eventually drove back toward the trailer where S., C., and P. had been. Seeing P. on the steps, Carrillo grabbed her, put her in the backseat, and demanded to know where S. and C. were. When she did not tell them, Muro-Monge hit her in the face. The defendants drove out of the trailer park with P., planning to go to a friend's house. As they passed some apartments, P. jumped out of the moving vehicle and ran toward one of the apartments, but Carrillo dragged her back to the vehicle.

¶4 When they arrived at their friend's house, Muro-Monge raped P. in the backseat of the vehicle, and she got out of the vehicle with no clothes on. Carrillo stated that he and Muro-Monge locked P. in the backseat of the vehicle and then decided they would kill her. They drove to a desert area, where Carrillo let P. out of the vehicle. When she began to move toward the desert, Muro-Monge, who still had the knife, caught her and stabbed her. Carrillo testified that he had already gone back to the car and that, when Muro-Monge later returned, he was carrying a softball-sized rock with blood on it.

¶5 Carrillo and Muro-Monge left P. in the desert, returned home, changed vehicles, and got a gas can that they filled with gasoline at a nearby station. They returned to the desert where Muro-Monge poured the gasoline over P., who was still alive, and lit her on fire. He and Carrillo then went home. P.'s body was discovered the next morning, and police officers found a paper bag and a rock with blood on it nearby. Muro-Monge's

fingerprint was later found on the paper bag, and the blood on the rock matched P.'s. Her DNA[2] was discovered in Carrillo's vehicle, and DNA on a vaginal swab taken from her body "was consistent with the . . . [DNA] swab from" Muro-Monge.

¶6 The state charged Muro-Monge with first-degree murder, kidnapping, and two counts of aggravated assault. The state sought the death penalty. After a jury found Muro-Monge guilty of all charges, he waived his right to a jury determination of aggravating and mitigating factors. The trial court weighed the aggravating and mitigating factors it found and "decline[d] to impose the death penalty." The court imposed a natural-life sentence on the first-degree murder conviction, and imposed presumptive, consecutive prison terms totaling 25.5 years for the remaining convictions. This appeal followed.

Discussion

¶7 Muro-Monge argues the trial court erred in denying his motion to suppress the statements he had given to police detectives during two separate interviews. According to Muro-Monge, his "native language was Spanish and . . . his preference was to speak in Spanish." He contends the detectives therefore should have given him the *Miranda* warnings in Spanish, and, because they did not, he "did not waive his *Miranda* rights." He also suggests his statements were involuntary. "We review the denial of a motion to suppress evidence for a clear abuse of discretion, viewing the evidence presented at the suppression hearing in the light most favorable to upholding the trial court's factual findings and

[2]Deoxyribonucleic acid.

reviewing its legal conclusions de novo." *State v. Esser*, 205 Ariz. 320, ¶ 3, 70 P.3d 449, 451 (App. 2003); *see also State v. Newell*, 212 Ariz. 389, ¶ 22, 132 P.3d 833, 840 (2006).

¶8 As the state points out, voluntariness and compliance with *Miranda* are different issues. "'[T]he necessity of giving *Miranda* warnings to a suspect relates not to the voluntariness of a confession but to its admissibility.'" *State v. Montes*, 136 Ariz. 491, 494, 667 P.2d 191, 194 (1983), *quoting State v. Morse*, 127 Ariz. 25, 29, 617 P.2d 1141, 1145 (1980). *Miranda* requires police officers to provide express warnings to suspects when they are in police custody in order to protect them from self-incrimination. 384 U.S. at 478-79. "If the accused has been given his *Miranda* warnings and makes a voluntary, knowing, and intelligent waiver of those rights . . . statements [made to police officers] are admissible." *State v. Smith*, 193 Ariz. 452, ¶ 29, 974 P.2d 431, 438 (1999).

¶9 "To satisfy *Miranda*, the State must show that [the defendant] understood his rights and intelligently and knowingly relinquished those rights before custodial interrogation began." *State v. Tapia*, 159 Ariz. 284, 286-87, 767 P.2d 5, 7-8 (1988). But, "'[t]here is no requirement as to the precise manner in which the police communicate the required warnings to one suspected of crime. The requirement is that the police fully advise such a person of his rights.'" *State v. Olquin*, 216 Ariz. 250, ¶ 11, 165 P.3d 228, 230 (App. 2007), *quoting Bell v. United States*, 382 F.2d 985, 987 (9th Cir. 1967). "A defendant does not even have to expressly state that he will waive his rights, so long as he answers the questions freely and does not attempt to terminate the interrogation." *State v. Stabler*, 162 Ariz. 370, 376, 783

P.2d 816, 822 (App. 1989). In determining whether a defendant waived his or her rights, a trial court must "focus on the particular facts and circumstances of a case, 'including the defendant's background, experience and conduct.'" *State v. Rivera*, 152 Ariz. 507, 513, 733 P.2d 1090, 1096 (1987), *quoting Montes*, 136 Ariz. at 495, 667 P.2d at 195.

¶10 In this case, Detective Kelley, one of the detectives who interviewed Muro-Monge, read him the *Miranda* warnings in English from a card at the start of his first interview and asked if he understood his rights. Muro-Monge responded, "Uhm-hum." Detective Pacheco, who spoke Spanish, asked Muro-Monge in Spanish if he had understood what Kelley had read. Muro-Monge said he had. Pacheco testified he had "never s[een] any indication that . . . Muro-Monge was not understanding the rights as Detective Kelley read these to him," and Pacheco had not felt it necessary to read Muro-Monge his rights in Spanish. Pacheco stated Muro-Monge would occasionally ask him to clarify in Spanish something Kelley had said in English, and Pacheco would do so. Both detectives testified Muro-Monge's answers in English were appropriate and responsive.

¶11 Likewise, during his second interview with the detectives, Kelley read Muro-Monge the *Miranda* warnings in English and asked if he understood his rights and whether he would talk to them. Answering in English, Muro-Monge replied, "Sure." The detectives testified Muro-Monge responded primarily in English to their questioning, again speaking to Pacheco in Spanish only when he needed clarification.

¶12 At the hearing, however, Muro-Monge presented as an expert witness Dr. Roseann Gonzalez, an English professor and director of the National Center for Interpretation Testing, Research and Policy at the University of Arizona, who had tested Muro-Monge's ability to understand English. She testified, *inter alia*, that she had concluded Muro-Monge was "a limited English speaker" and was mildly retarded. As a result, she stated, he "lack[ed] the language skill and cognitive capacity . . . to understand the contents and implications of the *Miranda* rights for his situation." She also testified his use of "uh-huh" after Kelley had talked to him about "transfer" evidence and the television show CSI, "is called back channeling in linguistics" and "does not mean, 'Yes, I understand you,' it just means, 'Keep talking, I'll try to figure out what you're saying.'" Based primarily on Gonzalez's testimony, Muro-Monge argues the trial court abused its discretion in concluding he had knowingly, intelligently, and voluntarily waived his rights and thus denying his motion to suppress.

¶13 But, as the state points out, the trial court "is in the best position to assess witness credibility or otherwise assess the weight of the evidence presented at a suppression hearing," and we defer to its implicit decision in this instance to give less weight to Gonzalez's testimony than that of other witnesses. *See State v. Estrada*, 209 Ariz. 287, ¶ 22, 100 P.3d 452, 457 (App. 2004). The detectives' testimony outlined above amply supported a conclusion that Muro-Monge had understood his rights. And, the state also presented evidence that Muro-Monge had been involved with law enforcement on other occasions and

previously had received the *Miranda* warnings,[3] factors that weigh in favor of a trial court's finding a valid waiver. *See Tapia*, 159 Ariz. at 287, 767 P.2d at 8 (noting defendant's "familiarity with the criminal process" and past receipt of *Miranda* warnings in finding waiver of rights valid); *see also Montes*, 136 Ariz. at 495, 667 P.2d at 195 (defendant "not unfamiliar with the criminal process"). Thus, considering the totality of the circumstances, we cannot say the trial court abused its discretion in denying the motion to suppress.

¶14 Having concluded the requirements of *Miranda* were satisfied, we must next determine whether Muro-Monge's statements were voluntary. As Muro-Monge argues, citing *State v. Ellison*, 213 Ariz. 116, ¶ 31, 140 P.3d 899, 910 (2006), "a suspect[']s statements are presumptively involuntary." But, as the *Ellison* court also stated, "'[a] prima facie case for admission of a confession is made when the officer testifies that the confession was obtained without threat, coercion or promises of immunity or a lesser penalty.'" *Id.*, *quoting State v. Jerousek*, 121 Ariz. 420, 424, 590 P.2d 1366, 1370 (1979). Here, both detectives testified that no threats were used and no promises were made, and Muro-Monge does not dispute that testimony.

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[3]One detective who testified about his contact with Muro-Monge in a separate case stated he had given him the *Miranda* warnings in English and had spoken to him entirely in English. Muro-Monge had not told the detective he could not understand him. Another detective testified he not only had read Muro-Monge the *Miranda* warnings in English, but also had explained the rights to him individually and had asked if he understood. Muro-Monge had answered affirmatively. A third detective testified he had given Muro-Monge the *Miranda* warnings in Spanish a week before the first interview in this case and had conducted a subsequent interview of Muro-Monge in both Spanish and English.

¶15 Ultimately, "[i]n determining the voluntariness of a confession, the trial court must look to the totality of the circumstances surrounding the confession and decide whether the will of the defendant has been overborne." *State v. Lopez*, 174 Ariz. 131, 137, 847 P.2d 1078, 1084 (1992). And, "while personal circumstances, such as intelligence and mental or emotional status, may be considered in a voluntariness inquiry, the critical element necessary to such a finding is whether police conduct constituted overreaching." *State v. Stanley*, 167 Ariz. 519, 524, 809 P.2d 944, 949 (1991). Here, at most, Muro-Monge alleges the detectives failed to take sufficient care in ensuring he understood the *Miranda* warnings and contends they "knew about and exploited [his] mental and linguistic deficits." Even assuming the record supported those assertions, we cannot say such evidence would be sufficient to constitute coercion or overreaching by the detectives. Thus, the trial court did not abuse its discretion in denying Muro-Monge's motion to suppress his statements to police.

Disposition

¶16 Muro-Monge's convictions and sentences are affirmed.

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GARYE L. VÁSQUEZ, Judge

CONCURRING:

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PETER J. ECKERSTROM, Presiding Judge

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J. WILLIAM BRAMMER, JR., Judge