

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	No. 64849-7-I
)	
Respondent,)	DIVISION ONE
)	
v.)	
)	
JOSE LUIS ESCOBAR,)	UNPUBLISHED OPINION
)	
<u>Appellant.</u>)	FILED: July 18, 2011

Lau, J. — Jose Luis Escobar appeals from his judgment and sentence entered on a jury’s verdict finding him guilty of first degree rape of a child in violation of RCW 9A.44.073. Escobar contends that the trial court erred by admitting into evidence a series of self-incriminating statements he made to police during custodial interrogation. But the evidence amply supports the trial court’s factual findings that Escobar was repeatedly and understandably given the required Miranda¹ warnings; voluntarily, knowingly, and intelligently waived those rights prior to making his statements; and he failed to establish that his statements were coerced. We affirm.

FACTS

On January 6, 2009, LR asked 49-year-old Escobar to baby-sit her two children, four-year-old ER, and her younger brother. Escobar, a friend they had known for about

¹ Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

five years, had never baby-sat the children before.

That afternoon, LR's husband picked up the children and brought them to LR at work, and she drove them home. While they were in the car with LR, ER disclosed that Escobar put her on a bed, pulled down her pants and underpants, and licked her vagina. LR called the police and took ER to the hospital. ER described Escobar's assault to a nurse practitioner and reported that Escobar told her not to tell anyone. ER later repeated her allegations to Carolyn Webster, a King County Prosecutor child interview specialist.

King County Sheriff Detective Chris Knudsen arrested Escobar at his home on January 15, 2009. Escobar said that he primarily spoke Spanish, so Detective Knudsen, who is proficient in speaking and understanding Spanish,² spoke to Escobar in Spanish thereafter. Escobar was transported to the precinct and interrogated. After Escobar explained he could not read well, Detective Knudsen read Escobar his Miranda rights from a preprinted form in Spanish.³ Escobar verbally acknowledged that he understood his rights and signed an acknowledgement and waiver of his rights in Spanish.

Escobar agreed to speak to Detective Knudsen and did not ask for a lawyer. Detective Knudsen videotaped his interview with Escobar at the precinct. The interview

² Detective Knudsen has "several years of coursework in Spanish from various learning institutions," and has spoken Spanish regularly in his work as a detective and patrol deputy.

³ That advice and the English translation were admitted as a pretrial exhibit.

lasted less than an hour. During the interrogation, Escobar denied abusing ER. He explained that he and ER had been playing a game where ER would jump on the bed and he would catch her. Escobar claimed that during the game, ER's shirt rolled up and he kissed her stomach.

The next day, King County Sheriff Polygraph Examiner Jason Brunson conducted a polygraph examination of Escobar, assisted by a Spanish interpreter.⁴ Detective Knudsen watched the examination and Brunson's subsequent interrogation of Escobar through a one-way mirror in an adjoining room. Brunson advised Escobar of his Miranda rights in English. The interpreter then went over them in Spanish. Escobar said he understood his rights, and he signed the form, indicating he understood his rights and wished to speak to Brunson. Escobar said that he was comfortable taking the polygraph. At a pretrial hearing, Escobar described Brunson as "very, very [pleasant]." Report of Proceedings (RP) (Nov. 19, 2009) at 29. Brunson concluded that Escobar understood what was happening and was able to communicate well and observed that Escobar appeared to be tracking the questions asked and responding appropriately. Escobar told Brunson he had been addicted to drugs and alcohol but was sober at the time of the interview. He said that he had been hospitalized about six years before for mental illness.

Brunson then administered the polygraph. Brunson described the allegations to Escobar, and Escobar denied them. Escobar repeated his allegation that he and ER

⁴ A court-certified Spanish interpreter translated the entire Brunson interview and Knudsen's second interview afterward.

were playing a jumping game, that ER's shirt rose up, and he kissed her stomach. Brunson determined that the polygraph results indicated that Escobar's denial of sexual contact was deceptive. After Brunson told Escobar that the polygraph indicated deception, Escobar admitted that ER's pants had come down and he had put his tongue into her vagina. He said he knew it was wrong.

At this point, Detective Knudsen entered the room and again advised Escobar of his Miranda rights using the Spanish form. Escobar again signed the form, acknowledging that he understood his rights and agreeing to talk. Under interrogation, Escobar repeatedly admitted to Detective Knudsen that he had licked ER's vagina. Eventually, Escobar requested that Detective Knudsen not ask him again about licking the child's vagina. Detective Knudsen agreed and stopped. The interrogation lasted 14 minutes. Escobar testified that Detective Knudsen was pleasant toward him. Escobar was charged with one count of first degree rape of a child, in violation of RCW 9A.44.073.

Prior to trial, a CrR 3.5 hearing was held to determine the admissibility of Escobar's statements to police. Escobar testified at the hearing through a Spanish interpreter.⁵ Escobar conceded that he had been advised of his constitutional rights three times, and his testimony revealed that he understood each of the rights specified. Escobar explained that he had had an attorney before, knew that a public defender is

⁵ Escobar also explained that he was born in El Salvador, that Spanish is his native language, and that he had spoken English for about five years. He claimed that he had about four months of schooling in El Salvador and about two months of community college in the United States.

appointed for a person without money, and understood how to contact a public defender while in jail. He contended, however, that he spoke to Detective Knudsen and Brunson because "they told me that I had to talk to them." RP (Nov. 19, 2009) at 9. He claimed that he felt he had no choice, "because [Detective Knudsen] had already told me that he was going to arrest me." RP (Nov. 19, 2009) at 9.

The trial court ruled that Escobar's custodial statements were admissible and entered written findings of fact and conclusions of law. As to the January 15th interview at the precinct, the court concluded, in pertinent part: "The defendant was advised of his Miranda warnings, and the defendant acknowledged those rights and waived those rights. The court finds that the defendant made a knowing, intelligent and voluntary waiver of his rights." The court found that Escobar's January 15 statements were voluntary. As to the January 16th polygraph examination and interview with Brunson, the trial court concluded: "The defendant was advised of his Miranda warnings, and made a knowing, voluntary and intelligent waiver of those rights." As to the January 16th interview with Knudsen, the trial court concluded: "The defendant was advised of his Miranda warnings, and made a knowing, voluntary and intelligent waiver of those rights." The court concluded that when Escobar was repeatedly asked about licking ER's vagina, his response, "[P]lease ask him not to ask me that question anymore," was an invocation of Escobar's right to remain silent, and excluded statements he made thereafter.

Escobar also testified at trial through an interpreter. He acknowledged that he had licked ER's stomach, but denied licking her vagina. He admitted telling both

Detective Knudsen and Brunson that he had licked ER's vagina but said that he felt he was forced to confess because they had asked him so many questions.

The jury found Escobar guilty as charged. The judge imposed a standard range indeterminate sentence. Escobar appeals.

ANALYSIS

Escobar contends that the trial court's factual findings that he voluntarily, knowingly, and intelligently waived his Miranda rights and that his statements were voluntary are not supported by substantial evidence. We disagree.

Voluntary, Knowing, and Intelligent Waiver

Custodial statements made by an accused are inadmissible unless preceded by a full advisement of rights and a knowing, intelligent, and voluntary waiver of rights, including the right to remain silent and the right to have counsel present at questioning. U.S. Const. amend. V; Miranda, 384 U.S. at 469–73; State v. Athan, 160 Wn.2d 354, 380, 158 P.3d 27 (2007). A reviewing court “will not disturb a trial court's conclusion that a waiver was voluntarily made if the trial court found, by a preponderance of the evidence, that the statements were voluntary and substantial evidence in the record supports the finding.” Athan, 160 Wn.2d at 380; State v. Cushing, 68 Wn. App. 388, 393, 842 P.2d 1035 (1993). The party challenging a finding of fact bears the burden of demonstrating that the finding is not supported by substantial evidence. State v. Vickers, 148 Wn.2d 91, 116, 59 P.3d 58 (2002). Appellate courts will not reevaluate the credibility of the witnesses below. State v. Davis, 73 Wn.2d 271, 283, 438 P.2d 185 (1968).

Here, the trial court's findings that Escobar made a voluntary, knowing, and intelligent waiver of his Miranda rights are amply supported by the evidentiary record.

The trial court's written findings of fact regarding Escobar's January 15 statement include the following:

3. . . . Knudsen advised the defendant of his Miranda warnings using a pre-printed rights form in the Spanish language The defendant signed his name indicating he understood his rights. He also indicated that he wished to waive his rights and speak with the detective, and signed his name under the waiver portion.

. . . .
5. Knudsen did not threaten or promise the defendant anything in exchange for the defendant giving a statement. The defendant did not at any point indicate that he did not understand his rights, [and] he did not exercise his right to remain silent, nor to have a lawyer. Detective Knudsen observed that the defendant was tracking his questions and that the defendant did not appear to have any problems understanding him.

The court's factual findings regarding Escobar's January 16 statements to Brunson include the following:

7. Brunson spoke with the defendant with the use of Mr. Fuentes, the Spanish interpreter. Brunson verbally advised the defendant of his Miranda warnings using a pre-printed form The defendant signed his name indicating he understood his rights. The defendant also indicated that he wished to waive his rights and speak with Brunson, and signed his name under the waiver portion.

. . . .
9. Brunson did not threaten or promise the defendant anything in exchange for the defendant giving a statement. The defendant did not, at any point, indicate that he did not understand his rights, [and] he did not exercise his right to remain silent, nor to have a lawyer. Brunson observed that the defendant was tracking his questions and that the defendant did not appear to have any problems understanding him.

The court's findings regarding Escobar's statements to Detective Knudsen after Brunson's interview included the following:

10. . . . The defendant was advised of his Miranda warnings, using the

exact same form that [Detective Knudsen] used on the 15th of January. The defendant again affixed his signature to the form indicating he understood his rights, and that he wanted to speak with Knudsen. The defendant proceeded to give a recorded statement. . . .

11. Knudsen did not threaten or promise the defendant anything in exchange for the defendant giving a statement. The defendant did not at any point indicate that he did not understand his rights, [and] he did not exercise his right to remain silent, nor to have a lawyer. Detective Knudsen observed that the defendant was tracking his questions and that the defendant did not appear to have any problems understanding him.

Regarding Escobar's contention that he did not understand his rights, the court found:

12. . . . The defendant testified while on direct that he did not understand his rights, but then on cross examination admitted that he understood each of the enumerated rights that were read to him. He further testified that he wanted to talk with Knudsen and Brunson to get out his side of the story.

These findings are all supported by substantial evidence, including the officers' accounts of the interviews, the recordings of the interviews, the pretrial exhibits, and Escobar's testimony.

The evidentiary record strongly supports the trial court's findings of fact. These findings, in turn, support the conclusions that Escobar's multiple waivers of his Miranda rights were voluntary, knowing, and intelligent. There was no error.

Voluntary Statements

Escobar asserts that his statements were involuntary because of coercive police tactics, his limited education, and an alleged mental illness. But Escobar fails to demonstrate any coercive conduct by Detective Knudsen or Brunson and did not assert in the trial court that any mental illness prevented him from understanding his rights.

In determining whether a defendant's statements during custodial interrogation are admissible and not coerced in violation of the Fifth Amendment to the United States

Constitution, a court considers the totality of the circumstances, including

the “crucial element of police coercion;”^{6]} 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.

State v. Unga, 165 Wn.2d 95, 101, 196 P.3d 645 (2008) (quoting Withrow v. Williams, 507 U.S. 680, 693, 113 S. Ct. 1745, 123 L. Ed. 2d 407 (1993)); State v. Broadaway, 133 Wn.2d 118, 132, 942 P.2d 363 (1997). The question is not whether the confession would have been made absent the police questioning but whether police behavior was so manipulative or coercive that it deprived the suspect of the ability to make a decision. Unga, 165 Wn.2d at 102.

The totality of the circumstances support the trial court's finding that the statements were voluntarily made. Escobar was repeatedly advised of his constitutional rights and was informed of the allegations against him. He fails to demonstrate any coercive aspects of the interviews or behavior of the officers involved. To the contrary, Escobar testified that both Knudsen and Brunson were pleasant toward him. Moreover, the trial court's finding that Detective Knudsen and Brunson made no threats or promises to obtain Escobar's statements is supported by the evidence.⁷

Escobar argues that his statement to Brunson was involuntary because Brunson

⁶ Coercive police activity is a necessary predicate to the finding that a confession is not voluntary. Unga, 165 Wn.2d at 101.

⁷ Escobar does not challenge the findings that no threats or promises were made. Accordingly, they are regarded as verities on appeal. State v. Hill, 123 Wn.2d 641, 644, 870 P.2d 313 (1994).

allegedly employed a ruse by suggesting that ER might have been “coming on to” Escobar and because the use of the polygraph was inherently coercive. Escobar’s arguments are unavailing. A police officer’s use of psychological ploys, “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.’”

Unqa, 165 Wn.2d at 102 (quoting Miller v. Fenton, 796 F.2d 598, 605 (3rd Cir. 1986)).

The record supports the trial court’s conclusion that Escobar “wanted to get out his side of the story,” and does suggest that Brunson’s questioning overcame Escobar’s own balancing of competing considerations. Nor was the use of a polygraph inherently coercive. See, e.g., State v. Rupe, 101 Wn.2d 664, 679-80, 683 P.2d 571 (1984).

Escobar’s claim that he was particularly susceptible to coercion is not supported by the record. His limited English is irrelevant here because he speaks Spanish and the advice of rights forms and all interviews either were in Spanish or translated by a Spanish interpreter. Significantly, Escobar’s pretrial testimony strongly supports the conclusion that he understands the nature and import of his Miranda rights. Escobar himself testified that he understood.

Escobar’s claim that he possessed “possibly low intelligence” is not supported by the record. Although he testified that he attended school for only a few months in El Salvador, his lack of schooling does not establish low intelligence. Escobar’s testimony indicated that he was sufficiently intelligent to make an informed waiver of his Miranda rights. Escobar testified that he learned to read by studying the Bible, that he had read the driver’s handbook in both English and Spanish, and that he had opened a bank

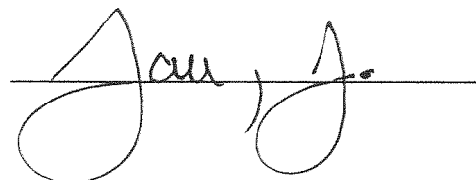
account and read and understood all of the documents involved in that transaction. Escobar also testified that he was responsible for collecting monthly rent from tenants of two buildings and for paying the total rent to the landlord. He also testified that he knows about the criminal justice system from watching the news and reading books at libraries.

Nor did Escobar present evidence to the trial court that he had a specific mental health diagnosis that affected his ability to understand his rights or to voluntarily waive them at the time he gave his statements. While he testified that he was disabled and mentioned in statements to investigators that he had been hospitalized in the past for mental problems, the nature and extent of those problems was not disclosed on the record.

The trial court's factual findings were amply supported by the evidence. The findings support the conclusion that Escobar's statements were voluntary.

In his pro se statement of additional grounds for review, Escobar seeks reversal of his conviction based on alleged violations of his Miranda rights and his rights to due process of law, equal protection, and access to counsel. Although he raises numerous arguments, he does not identify any specific action by the trial court, the prosecutor, his counsel, or the police officers that would tend to support his conclusory contentions. His contentions that he did not comprehend the accusations against him or the nature of the proceedings are unsupported by the record.

We affirm.

A handwritten signature in black ink, appearing to read "Juan J.", is written over a horizontal line. The signature is stylized with large, flowing loops.

WE CONCUR:

Schiveller, J.

Cox, J.