

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,)	No. 68517-1-I
)	
Respondent,)	
)	
v.)	
)	
JESUS SABIDO, d.o.b. 10/27/96,)	UNPUBLISHED OPINION
)	
Appellant.)	FILED: November 19, 2012
)	

Verellen, J. — Jesus Sabido appeals a juvenile court disposition finding him guilty of two counts of residential burglary. He contends that the juvenile court should have suppressed his confession to police because it was coerced and thus involuntary. The juvenile court’s findings of fact support its conclusion that Sabido waived his rights under Miranda v. Arizona¹ in a knowing, intelligent, and voluntary manner. We affirm.

BACKGROUND

On March 17, 2011, Detective Steven Hoover and Lieutenant Lisa Patricelli of the Bellevue Police Department went to Sabido’s house after learning that a teacher had seen the 14-year-old carrying Chinese currency.² When Hoover and Patricelli

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

² Hoover was aware that a month earlier Chinese currency had been stolen from the Bellevue residence of Xuebin Zhang.

arrived, Sabido was not at home. They spoke briefly with his mother, father, and stepfather (collectively “the parents”).³ According to the parents, Hoover told them that if Sabido cooperated, he would not be charged with a crime. The mother consented to a search of her son’s bedroom.⁴ Before leaving, Hoover told the stepfather to call him when Sabido arrived. When Sabido returned home later that day, his parents told him that the police were looking for him and had searched his bedroom.

The stepfather called Hoover and told him that Sabido was back. Hoover returned to the house and, before asking any questions, informed Sabido of his Miranda rights. Hoover also read to Sabido the additional warning for juveniles.⁵ He did not ask if Sabido understood those rights.

Initially, Hoover spoke with Sabido in his parents’ presence. Hoover asked him about the Chinese currency. Sabido stated that the money belonged to his friend, L.R., and that he did not know why L.R. had it. After Sabido’s parents encouraged him to cooperate with Hoover, Hoover and Sabido left the house to talk privately. According to Sabido, at this point, Hoover told him that if he did not cooperate, Hoover would take his “ass to juvie.”⁶ Outside, Hoover asked again

³ Sabido comes from a Spanish-speaking household. His mother does not speak English, and Detective Hoover does not speak Spanish. Sabido’s stepfather translated what Hoover said for the benefit of Sabido’s mother.

⁴ She signed a Spanish language consent form.

⁵ That warning reads, “If you’re under the age of 18, anything you say can be used against you in a juvenile court prosecution for a juvenile offense and can also be used against you in an adult court prosecution if you are to be tried as an adult.” Report of Proceedings (RP) (Feb. 7, 2012) at 22.

⁶ Clerk’s Papers at 75.

about the money, and Sabido stated, “Yeah, we broke into it.”⁷ He told Hoover that he and L.R. had entered a house through the back window and that they had taken the money and a laptop computer. Sabido told Hoover that he sold the currency for \$50.⁸ Hoover also asked Sabido about a large amount of change that his stepfather had seen him with. Sabido said that three to four months before, he had gone to an apartment complex and taken the change from a tanning bed.

Officer Jan Auclair arrived at Sabido’s house. The officers and Sabido drove to the apartments where the tanning bed was located, as well as Xuebin Zhang’s residence. After identifying these locations for the officers, Sabido was taken to the police station, where he was booked and fingerprinted.

The officers then took Sabido home. Hoover told Sabido that he thought there were other places Sabido was not telling him about. While Hoover talked to Sabido’s parents, Auclair discussed with Sabido whether he had been completely forthcoming. Auclair told Sabido that she had children, so she understood how his mother felt. She also advised Sabido to tell Hoover everything. Sabido then admitted to Hoover that he had broken into another apartment.

The State charged Sabido with two counts of residential burglary, attempted residential burglary, and third degree theft. Sabido moved to suppress his statements to police, arguing that he made them involuntarily. The court held a CrR 3.5 hearing. Sabido testified that he told Hoover several times that he did not

⁷ RP (Feb. 7, 2012) at 26.

⁸ Sabido also admitted to taking some jewelry, and he said that L.R. “got the cameras.” Id. at 27. He told Hoover that he received \$100 “for everything.” Id.

want to talk and that Hoover said if he did not cooperate, he would “take his ass to juv[enile detention].”⁹ Sabido, his mother and stepfather testified that Hoover told them Sabido would not be charged with a crime if he cooperated.¹⁰ According to the parents, they encouraged Sabido to talk because Hoover told them that he would help Sabido. Hoover denied making any of such statements. He testified that during his conversations with the parents and with Sabido, he told them that cooperation with the police would be “beneficial” to Sabido in court and would help to make the victims whole. He specifically denied the comment about taking him to juvenile detention. During the CrR 3.5 hearing, defense counsel also argued that Sabido could not understand the Miranda warnings due to a learning disability.¹¹

The trial court denied the suppression motion, ruling that Sabido made a knowing, intelligent, and voluntary waiver of his Miranda rights. After a stipulated-facts trial, the juvenile court found Sabido guilty of two counts of residential burglary.¹²

Sabido appeals.

DISCUSSION

Sabido contends the juvenile court erred by failing to suppress the statements he made to police. In reviewing the denial of a motion to suppress, we determine whether substantial evidence supports the trial court’s findings of fact and whether

⁹ Clerk’s Papers at 75.

¹⁰ Sabido’s father testified that Hoover told him Sabido would not be arrested if he cooperated with the police.

¹¹ Sabido provided the court with a copy of his school file.

¹² The State dismissed the attempted burglary and third degree theft charges.

those findings support the conclusions of law.¹³ “Unchallenged findings of fact are verities on appeal.”¹⁴ We review conclusions of law de novo.¹⁵

A defendant waives his or her Miranda rights if the waiver is knowing, voluntary, and intelligent.¹⁶ It is the State’s burden to prove voluntariness by a preponderance of the evidence.¹⁷ In determining whether a juvenile voluntarily waived Miranda rights, we consider the totality of the circumstances.¹⁸

The test for voluntariness is whether the defendant made the free and unconstrained choice to confess.¹⁹ Factors that a court considers in assessing the totality of the circumstances include the defendant’s physical condition, age, mental abilities, experience, and the conduct of the police.²⁰ “State courts have a responsibility to examine confessions of a juvenile with special care.”²¹

¹³ State v. Ross, 106 Wn. App. 876, 880, 26 P.3d 298 (2001). Substantial evidence exists if sufficient to persuade a fair-minded, rational person of the truth of the matter asserted. State v. Levy, 156 Wn.2d 709, 733, 132 P.3d 1076 (2006) (quoting State v. Mendez, 137 Wn.2d 208, 214, 970 P.2d 722 (1999)).

¹⁴ State v. MacDicken, ___ Wn. App. ___, 286 P.3d 413, 415 (2012).

¹⁵ State v. Acrey, 148 Wn.2d 738, 745, 64 P.3d 594 (2003) (quoting Mendez, 137 Wn.2d at 214).

¹⁶ Miranda, 384 U.S. at 444; State v. Bradford, 95 Wn. App. 935, 944, 978 P.2d 534 (1999).

¹⁷ State v. Braun, 82 Wn.2d 157, 162, 509 P.2d 742 (1973).

¹⁸ State v. Allen, 63 Wn. App. 623, 626, 821 P.2d 533 (1991).

¹⁹ State v. Thompson, 73 Wn. App. 122, 131, 867 P.2d 691 (1994) (quoting Schneckloth v. Bustamonte, 412 U.S. 218, 225, 93 S. Ct. 2041, 36 L. Ed. 2d 854 (1973)).

²⁰ State v. Aten, 130 Wn.2d 640, 664, 927 P.2d 210 (1996).

²¹ State v. Unga, 165 Wn.2d 95, 103, 196 P.3d 645 (2008).

Regarding the reading of Miranda warnings, Hoover was asked:

- Q. Did the respondent ask you any questions regarding either of those rights?
- A. No, he did not.
- Q. Did the respondent give you any reason to think that he may not understand these rights?
- A. No, he did not.
- Q. Were you able to communicate with the respondent?
- A. Yes, I was.
- Q. Did the respondent appear to understand English?
- A. Yes, he does.
- Q. Did the respondent in any way lead you to believe his rights needed to be read in Spanish?
- A. No, he did not.
- Q. Was the respondent able to converse, ask and answer questions?
- A. Yes, he was.
- Q. Did the respondent appear to be oriented in time and space?
- A. Yes, he was.
- Q. The respondent did not appear to be confused?
- A. No, he did not.
- Q. What was the demeanor of the respondent at this time?
- A. As I said before, a little sullen, but other than that he sat and talked with me.
- Q. Did the respondent ever invoke his right to remain silent?
- A. No, he did not.
- Q. Did the respondent ask for an attorney?

A. No, he did not.

Q. Did you make any promises to the respondent for him to give a statement?

A. No, I did not.

Q. Did you make any threats to the respondent to make him give you a statement?

A. No, he did not.

Q. Did you in any way coerce the respondent to talk to you?

A. No, I did not.

Q. Did you make any comments regarding his cooperation?

A. I don't recall exactly what I said, but in these situations I generally will say something like that it would benefit you to talk to me and to cooperate with me.^[22]

Hoover also stated that when he speaks with a juvenile who does not appear to understand the Miranda warnings, he takes additional steps to ensure comprehension, but "I did not get any indication from [Sabido] that he did not understand."²³

Sabido claims that his confession should not be viewed as voluntary in light of Hoover's "threat"²⁴ that he would take Sabido to juvenile detention. Sabido testified that he cooperated with Hoover only because he did not want to go to jail. But the trial court found that Hoover did not actually make this threat.²⁵ The trial court's

²² RP (Feb. 7, 2012) at 23-24.

²³ Id. at 50.

²⁴ Br. of Appellant at 16.

²⁵ Sabido points out that in its oral ruling, the trial court indicated "something was said about juvi." RP (Feb. 13, 2012) at 118. But the trial court did not find that the statement regarding "juvi" was the threat Sabido alleges Hoover made.

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finding is supported by substantial evidence, *e.g.*, Hoover's testimony that, at most,

he told Sabido that cooperation would be beneficial. Sabido also points to his parents' testimony that Hoover told them he would not charge Sabido with a crime in exchange for his cooperation. Again, the trial court determined that Hoover did not make this statement. While the witnesses at the CrR 3.5 hearing gave conflicting testimony as to what exactly was said at Sabido's house, the trial court found Hoover's testimony most credible. We will not disturb that credibility determination on appeal.²⁶ Substantial evidence supports the trial courts findings that Hoover did not make any threats or promises to Sabido or to his parents.

Sabido also challenges the trial court's finding that he "appeared to be sullen but did not invoke his right to remain silent"²⁷ and that Sabido agreed to speak with Hoover outside. These findings are supported by substantial evidence in the record. Hoover testified that Sabido did not invoke his right to remain silent. And Sabido testified that he willingly left his parents' house to talk outside with Hoover.

Next, Sabido claims that the trial court gave insufficient weight to his age and developmental disability. In determining whether to suppress his statements, the court considered those characteristics and entered the following challenged conclusions:

12. The respondent is capable of understanding spoken Miranda rights.
13. The respondent's learning issues did not affect his ability to understand what was happening.

.....

²⁶ State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

²⁷ Clerk's Papers at 76.

19. The respondent had the capacity to understand his rights.^[28]

These conclusions are supported by the trial court's uncontested findings that (1) Sabido stated he understood his rights; (2) that Sabido's school records indicated that he had both behavioral and developmental problems, but he was taking an advanced placement course and was doing well in other classes; and (3) that Sabido had been advised of his Miranda rights on another occasion.²⁹ Additionally, the trial court had the opportunity to observe Sabido during his testimony and stated afterward that he "speaks and understands English very well despite his issues in school."³⁰

Finally, Sabido claims that the State failed to prove a valid waiver of his Miranda rights because he did not explicitly waive those rights. An express statement is not required for an effective waiver.³¹ Waiver may be implied "where the record reveals that a defendant understood his rights and volunteered information after reaching such understanding."³² "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."³³ Because the record supports the trial court's findings that Hoover did not

²⁸ Id.

²⁹ Sabido's grades included two "B"s, four "A"s, and one "D" in the advanced placement class.

³⁰ RP (Feb. 13, 2012) at 108.

³¹ State v. Terrovona, 105 Wn.2d 632, 646, 716 P.2d 295 (1986).

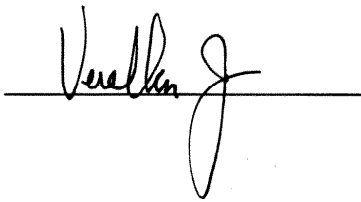
³² Id.

³³ Id. at 646-47.

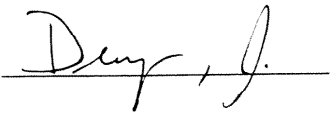
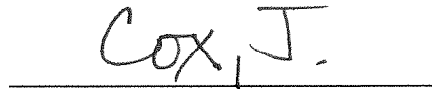
threaten Sabido and that Sabido understood his rights and decided to talk anyway, waiver may be implied.

Substantial evidence supports the court's finding that Sabido understood his rights and agreed to speak with Hoover. Those findings support the conclusion that Sabido knowingly, voluntarily, and intelligently waived his Miranda rights.

Affirmed.

A handwritten signature in cursive script, appearing to read "Vuelken J.", is written above a horizontal line.

WE CONCUR:

A handwritten signature in cursive script, appearing to read "Dery, J.", is written above a horizontal line.A handwritten signature in cursive script, appearing to read "Cox, J.", is written above a horizontal line.