SUPREME COURT COPY

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA

Plaintiff/Respondent,

v.

SONNY ENRACA

Defendant/Appellant

Supreme Court No.
Crim. S080947

Riverside County
Superior Court
No. CR-60333

SUPREME COURT
FILED
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Deputy

APPELLANT'S SUPPLEMENTAL BRIEF

Appeal from the Judgment of the Superior Court
Riverside County
Honorable W. Charles Morgan, Judge

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DEATH PENALTY

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INTRODUCTION

The arguments raised herein were previously raised in Appellant's Reply Brief. As explained in appellant's application for leave to file a supplement brief, these arguments are being raised again here to ensure that (1) the arguments are properly before the Court, and (2) respondent is accorded a full opportunity to respond to them.

SONNY ENRACA DID NOT MAKE A KNOWING, INTELLIGENT OR VOLUNTARY WAIVER OF HIS RIGHT TO COUNSEL AS REQUIRED BY *EDWARDS v. ARIZONA* BEFORE MAKING INCRIMINATING STATEMENTS BECAUSE HE WAS INTERROGATED AND MANIPULATED AFTER HE INVOKED HIS *MIRANDA* RIGHTS AND MISADVISED ABOUT HIS RIGHT TO COUNSEL AND THE LEGAL PROCESS, AND WAS NOT INFORMED OF HIS RIGHT TO CONSULT WITH THE PHILIPPINE CONSULATE

The trial judge erred in ruling that Sonny had knowingly, intelligently and voluntarily waived his rights under *Edwards v. Arizona* when immediately *after* he invoked his *Miranda* rights, he was pressured by Detective Schultz to talk during "the period of time when Mr. Enraca would be able to speak to...law enforcement without a lawyer being present" (IV RT 735: 3-8); led to believe that this represented his "only chance in life" – to get his story to the DA before arraignment; was twice told that he could only obtain appointed counsel at arraignment 48 hours later; and was not told of his right to consult the Philippine Consulate (nor was the Consulate notified of Sonny's arrest).

The trial judge prejudicially erred in denying suppression because:

(A) interrogation did not cease when Sonny invoked his *Miranda* rights; (B) the totality of circumstances suggest Sonny was misled into believing he had to choose between his right to counsel and "his only chance in life" – getting his side of the story to the DA before the charges were filed; and (C) any doubt about whether Sonny's purported waiver of his rights was unknowing, unintelligent and involuntary should be resolved against the waiver because of the treaty violations.

A. It Was Error Not to Suppress Sonny's Statements to Spidle Because After Sonny Invoked His Rights, Interrogation Continued In Another Form.

It is undisputed that when Sonny invoked his *Miranda* rights, law enforcement were barred from further interrogation unless Sonny initiated the discussions and made a knowing and intelligent waiver of those rights. (See *Oregon v. Bradshaw* (1983) 462 U.S. 1039, 1042; *Edwards v. Arizona* (1981) 451 U.S. 477, 484-485.) Any claim that law enforcement complied with the requirements of *Edwards* because Detective Schultz stopped questioning Sonny when he invoked his rights is false. Schultz stopped asking questions of Sonny when he invoked his rights, but the interrogation did *not* cease: When Sonny asked when he could see his lawyer, Schultz made statements *which he admitted were calculated to get Sonny to "speak with law enforcement without a lawyer being present*." (IV RT 735: 3-8 [emphasis added].) This pressure alone violated *Edwards* command that interrogation cease when a suspect invokes his *Miranda* rights: this case falls squarely within the rule that interrogation includes any words or conduct the officers "should know are reasonably likely to elicit an incriminating response from the suspect." (*Rhode Island v. Innis* (1980) 446 U.S. 291, 301; *Edwards v. Arizona*, *supra*, 451 U.S. at 486, n. 9.) As the United States Supreme Court has stated:

> *Edwards* set forth a "bright-line" rule that *all* questioning must cease after an accused requests counsel....In the absence of such a bright-line prohibition, the authorities through 'badger[ing] or 'overreaching' - explicit or subtle, deliberate or unintentional - might otherwise wear down the accused and persuade him to incriminate himself notwithstanding his earlier request for counsel's assistance.

(*Smith v. Illinois* (1984) 469 U.S. 91, 98 [emphasis in original].) Detective Shultz's candid admissions at the evidentiary hearing make it clear he crossed the "bright line" drawn by *Edwards* and *Smith.* Schultz admitted that his post-invocation words were intended to get Sonny talking without a lawyer present (IV RT 735:3-8); Schultz analogized it to "talking with your kids when they do something wrong" (IV RT 735:21-22), essentially putting Sonny in a corner like a naughty child, suggesting that invoking

his rights was doing something wrong for which he should atone by fessing up to the police before he was arraigned. Schultz's tactics succeeded – within minutes Sonny was telling another parental figure, "good cop" Detective Spidle, about the crime without a lawyer present. *Edwards* was clearly violated and Sonny's subsequent statements to Spidle should be suppressed for that reason alone.

But incursions across the bright line did not end with Schultz's admonition to Sonny. "Bad cop" Schultz passed Sonny on to "good cop" Spidle. Spidle's actions, whether "explicit or subtle, deliberate or unintentional" (*Smith, supra*), softened Sonny up by allowing him to call his girlfriend and by continuing to engage him in conversation about rewards, the meaning of his tattoo, and honor; he could have stayed on the right side of the bright line by ceasing all non-booking discussions with Sonny and re-administering a *Miranda* warning as required by this Court in *People v. Sims* (1993) 5 Cal.4th 405, 438- 444. But Spidle did not limit himself to booking questions. *Cf. Pennsylvania v. Muniz* (1990) 496 U.S. 582, 601(exception from *Edwards* for "routine booking questions" about biographical data necessary to complete booking). Instead, Spidle asked extraneous questions regarding the meaning of Sonny's tattoo (IV RT 819:2-5), and volunteered statements about: (1) the possibility that victims' parents had offered an award (IV RT 811:4-5); (2) the victims' parents "were extremely upset" (*Id.* at 811:8-13)[1]; (3) the likelihood that different versions of the crime would be offered and there are "two sides to every story" (*id.* at 819:21-28) and (4) the absence of honor and allegiance among friends:

> I just wanted to tell him, "Hey look, you know. We know friends will tell on you to stay out of trouble. And that's the way it is nowadays, Okay? That is the way it is.."

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[1] Spidle admitted this discussion had nothing to do with booking.(IV RT 811:14-18.) The trial judge then erroneously sustained a prosecution objection to whether speaking about parents of victims was a known technique designed to elicit a response from a suspect. (*Id.* at lines 19-28.)

(V RT 824:1-5.) Thus, Spidle crossed the bright line by prolonging the conversations rather than re-advising Sonny of his rights, particularly of the fact that anything Sonny said could be used against him. His tactics worked: Sonny told Spidle that he talked to Spidle because Spidle gave him "a lot of respect" (IV RT 762:15-25) whereas Schultz and Horton were "assholes." (IV RT 761:23 to 762:15-25.)

Nor did Spidle ever actually advise Sonny of his rights as required by *Sims*. The evidence suggests Spidle asked if "they read you your damn rights" to belittle those rights as unimportant and get Sonny to waive them without considering their full extent. Moreover, although Spidle *said* he could not ask Sonny any questions, he promised to take anything Sonny said to the District Attorney – which Schultz had forcefully (and misleadingly) conveyed provided Sonny's "only chance in life." Thus, Spidle's role as the "good cop" to Schultz's "bad cop" placed added psychological pressure on Sonny to talk and was another part of the continuing interrogation techniques "explicit or subtle, deliberate or unintentional" which violated *Edwards*. Suppression is required by *Smith*, *Innis* and *Edwards*.

B. Respondent Cannot Meets Its Burden to Demonstrate That Sonny's Waiver Was Knowing, Voluntary and Intelligent

Even if the continued interrogation by Schultz and Spidle were not enough to invalidate Sonny's waiver by themselves, the totality of circumstances make it clear that Sonny was manipulated by Shultz and Spidle into believing that he had to choose between exercising his right to counsel and "his only chance in life" – to talk with law enforcement without a lawyer during the 48 hours before arraignment. The invalidity of the waiver becomes even clearer because Schultz and Spidle violated Sonny's and the Philippine Government's rights to have Sonny notified of his right to consult the Philippine Consulate and the Consulate's right to be informed of Sonny's arrest so that they could counsel him.

1. The circumstances establish that Sonny was manipulated into making statements which were neither knowing, voluntary nor intelligent. The totality of circumstances show that because the detectives' statements led Sonny to believe that during "the period of time when [he] would be able to speak to...law enforcement without a lawyer being present." (IV RT 735: 3-8), he had to choose between talking to the detectives or "going to jail for double homicides" and that his "only chance in life [was] to come up with exactly what happened" (21 CT 5612) "so [the officers] could go to the DA and talk about either manslaughter ... or I don't know ... ." (21 CT 5613) After Sonny invoked his rights, rather than ceasing interrogation, Schultz pressured him to "deeply consider"... "speak[ing] to ... law enforcement without a lawyer being present." (21 CT 5617 ["deeply consider" language]; IV RT 735:3-8 [what Schultz meant by it].). Spidle reinforced this line by telling Sonny that he would get a lawyer only "if he's formally charged with a crime," this would not be for "48 to 72 hours" but Spidle would tape record Sonny's statement and *take it to the District Attorney* (IV RT 749:26 to 750:6.) These circumstances establish that Sonny was pressured into waiving his rights by statements that took advantage of his inexperience with the legal system, which Schultz and Spidle used to pressure him to talk before he could get a lawyer appointed. Certainly, respondent has not met its burden of demonstrating that Sonny's waiver was knowing, intelligent and voluntary.

The issue here is not whether the words of the *Miranda* warnings, viewed in isolation, passed constitutional muster, but whether the prosecution met its burden of demonstrating from the totality of circumstances that Sonny waived his rights knowingly, intelligently and voluntarily. Here, the "bad cop," Detective Schultz, intended to pressure Sonny into talking after he invoked his *Miranda* rights by leading him to "deeply consider" (21 CT 5617) that he would benefit from talking with law enforcement during that "period of time when [he] would be able to speak to...law enforcement without a lawyer being present." IV RT 735: 3-8) Schultz succeeded in sending him to the "good

cop," Detective Spidle, who not only reiterated that Sonny could not see a lawyer for 48 to 72 hours and told Sonny that counsel would be appointed only if and when Sonny was formally charged with a crime, but also promised to take any statement Sonny made to the District Attorney.

The critical question of whether the offer of appointed counsel was "effective and express" *(Miranda,* 384 U.S. at 473) is more important than the text of the warning. Here the offer was clouded by the repeated suggestions by Detective Schultz that Sonny would lose a vital advantage — indeed, "his only chance in life" – if he did not talk with law enforcement prior to arraignment (and the appointment of counsel) so that they, the officers, could help prevent the charges from being as severe as they would otherwise be. The record demonstrates that the officers intended that Sonny feel the pressure of not being able to talk with counsel for at least 48 hours when "his only chance in life" was to speak with officers before then and without counsel. In addition, the totality of the circumstances in which Sonny was induced to speak with Spidle includes the factors discussed in point A above.

The burden is on respondent to demonstrate that Sonny, in "waiving" his *Miranda-Edwards* rights, did so with "full awareness of the nature of the right being abandoned and the consequences of the decision to abandon it." (*Moran v. Burbine* (1986) 475 U.S. 412, 421.) Given the misleading warnings given Sonny, the coordinated message that Sonny received that it was vitally important to Sonny's future that Sonny speak with police during "the period of time when Mr. Enraca would *be able to speak to... law enforcement without a lawyer being present*" (IV RT 735: 3-8), the bad-cop-good-cop tactics used before *and after* Sonny invoked his rights, and the suggestion that "his only chance in life" was to talk with law enforcement so that they could go to the district attorney to get the charges reduced, respondent has not come close to meeting that burden. The record establishes that the words and actions of Schultz and Spidle led Sonny to believe that he had to choose between his right to counsel and telling his side to

the police when it might still matter – *before* arraignment. Putting Sonny to this false and misleading choice in the context of improper post-invocation contact and a coercive bad-cop, good-cop interrogation technique clearly violated his rights under *Edwards*, *Bradshaw* and *Miranda*.

2. The undisputed violations of the Vienna Convention and 1948 Treaty Between the United States and the Philippines on Consular Relations are part of the totality of circumstances which prevent respondent from meeting its burden. It is clear and undisputed that law enforcement never told Sonny of his rights to see consular officials and that they failed to notify the Philippine Consulate as required by the Vienna Convention and the 1948 Treaty between the Philippines and the United States. Appellant can raise these undisputed violations of the Vienna Convention and the 1948 Treaty "as part of a broader challenge to the voluntariness of his statements to police." (*Sanchez-Llamas v. Oregon* (2006) 548 U.S. 331, 350.)

If Schultz *or* Spidle complied with their treaty-based obligations, Sonny would have been far less vulnerable to the officers' tactics. Sonny was anxious for legal advice, twice asking when he would get appointed counsel; the officers fed this anxiety by misleadingly suggesting that it was urgent to talk with them before charges were filed, without counsel. Informing Sonny of his access to an *alternative* source of timely advice from consular staff concerned with his welfare would itself have likely led Sonny to refrain from further discussions with the police. The trial judge specifically stated that consular officials:

> would have ... gotten him counsel or helped ... and would have advised him not to do anything until counsel spoke with him first, just like you and I would have. And I assume that."

(IV RT 700: 19-22). Moreover, consular personnel could have corrected the officers' misleading message that it was crucial for him to speak with officers before arraignment (*Cf. United States v. Doe* (9th Cir. 1988) 862 F.2d 776, 781 (remanding foreign

juvenile's case for prejudice determination where failure to notify the consulate of his custody "deprived him of support and counsel during the pre-arraignment period. . . . and may have led directly to his post-arrest confessions.") Consular personnel could also have assisted in Sonny's obtaining access to provisional counsel until arraignment. There is no reason to doubt that Sonny – or anyone in his situation – would have followed such consular advice. It is thus very reasonable to conclude – and not at all speculative – that the officers' violation of their treaty-based obligations served to reinforce the coercive and misleading impact of their improper interrogation tactics and thus further undermined the voluntariness of Sonny's "waiver" of his rights to counsel and to remain silent.

Given the burden on respondent to demonstrate voluntariness, the trial court should have found Sonny did not voluntarily, knowingly and intelligently waive. He was deliberately placed in a situation where he was led to believe that he had to choose quickly between pursuing "his only chance in life" to avoid the most severe charges by talking to law enforcement without counsel present and without waiting to speak with an attorney. Psychological pressure was placed on him (in violation of *Edwards*) by "bad cop" Schultz to "deeply consider" talking without counsel present *after* Sonny invoked his rights and then by "good cop" Spidle who went far beyond normal booking procedures, commiserated with Sonny and failed to re-advise Sonny that any statements he made could be used against him (in violation of *Sims*). In the midst of this coordinated effort to get him to talk after he had invoked his rights, at the crucial moments when he was likely considering what to do about the evidence Schultz had confronted him with, Sonny was also denied information about his right to consult a supportive Philippine Consulate which would have helped him sort through the false choice imposed upon him by Schultz and Spidle. In these circumstances, his waiver was not knowing, intelligent or voluntary. Certainly the prosecution has not met its burden. It was therefore error not to suppress Sonny's initial and two subsequent statements to Spidle.

CONCLUSION

As discussed in the ARB, the error was prejudicial and the convictions for first degree murder should be reversed.

Respectfully submitted,

____

Paul J. Spiegelman
Counsel for Appellant, Sonny Enraca

CERTIFICATE PURSUANT TO CA. RULE OF COURT 8.630

I hereby certify that, according to my computer's word processing program, this brief, exclusive of tables, is 2,788 words, within the 2,800-word limit specified in the California Rules of Court.

____

Paul J. Spiegelman
ATTORNEY FOR APPELLANT

DECLARATION OF SERVICE BY MAIL

Re: *People v. Enraca*, Supreme Court No. S 080947

I, Paul J. Spiegelman, declare that I am over 18 years of age and am not a party to this action. My business address is P.0. Box 22575, San Diego, CA 92192-2575. I served a copy of the attached:

APPELLANT'S SUPPLEMENTAL BRIEF

on each of the following by placing same in an envelope addressed respectively as follows:

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I declare under penalty of perjury that the foregoing is true and correct.

Executed at San Diego, California this 4th day of January, 2010.

PAUL J. SPIEGELMAN, DECLARANT