

SUPREME COURT COPY

In the Supreme Court of the State of California

PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff and Respondent,

v.

SONNY ENRACA,

Defendant and Appellant.

CAPITAL CASE

Case No. S080947

SUPREME COURT
FILED

APR 07 2010

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Deputy

Riverside County Superior Court Case No. CR60333
W. Charles Morgan, Judge

RESPONDENT'S SUPPLEMENTAL BRIEF

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INTRODUCTION

In the first argument of his opening brief, Enraca claimed the trial court violated his privilege against self-incrimination by permitting the prosecution to introduce Enraca's post-invocation confessions. He asserted that although he initiated the post-invocation conversation with law enforcement, he did not knowingly and intelligently waive his rights because he had been misinformed about his right to counsel and not informed about his right to contact and consult with the Philippine embassy. (AOB 58-82.)

In response to the argument, respondent demonstrated that Enraca was properly informed of his right to counsel, that he knowingly and intelligently waived that right along with his right to silence, and that the failure to advise Enraca of the consular notification right did not affect the waiver, which was, therefore, voluntary, knowing and intelligent. (RB 23-33.) In reply, Enraca argued that not only was he misadvised about his right to counsel, but that he was subjected to improper post-invocation interrogation. (ARB 1-30.) Because of his concern that the post-invocation interrogation went beyond his original argument, Enraca reiterated this argument in his supplemental brief. (ASB 1-9.)

ARGUMENT

I. THE TRIAL COURT CORRECTLY DETERMINED THAT ENRACA VOLUNTARILY AND INTELLIGENTLY WAIVED HIS *MIRANDA* RIGHTS AFTER HE INITIATED FURTHER COMMUNICATION

A. Trial Court Proceedings

The defense filed a motion in the trial court on January 8, 1999, seeking suppression of Enraca's post-arrest statements. The defense contended that Enraca had not been advised of the right to consular notification under the Vienna Convention and because of that violation, his waiver of rights was not knowing and intelligent. (5 CT 1227-1259.) The

prosecution filed its opposition. (5 CT 1279-1341.) On February 10, 1999, the trial court heard the motion and took evidence. (5 CT 1357-1358; 4 RT 688, et. seq.) The hearing concluded on February 16, 1999, when the defense also filed its response to the prosecution's opposition. (5 CT 1359, 1362-1377.) On February 23, 1999, the trial court denied the motion. (5 RT 1400; 4 RT 896-901.)

B. Evidence Presented In The Trial Court

Riverside Sheriff's Detective John Schultz, the lead investigator in the Gobert-Hernandez homicide case, testified he learned of Enraca's possible involvement in the homicides approximately three-and-a-half weeks after the November 19, 1994, shootings. (4 RT 708-710.) Enraca was arrested on December 12, 1994, by Detectives Phil Sanchez and Donna Burcham, and brought to the Sheriff's station on that date, shortly after 5:00 p.m. (4 RT 710.)

Detectives Schultz and John Horton met Enraca in an interview room at the station. Enraca was advised of his *Miranda* rights.¹ He understood and waived his rights. (4 RT 712-714.)

Enraca said he was born in the Philippines and had been in the United States for eight to nine years. (4 RT 727.) He was not advised of his right to consular notification and the Philippine consulate was not notified of Enraca's arrest. (4 RT 727.) Enraca said he read and understood English. (4 RT 717.) During the course of the 15-to-20-minute interview, Enraca denied any involvement in the shootings. (4 RT 718-719.)

Detective Schulz and Horton challenged Enraca's claim of non-involvement. They told him there were eyewitnesses to the shootings. (4 RT 719.) Detective Horton told Enraca he needed to give some explanation

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

in order to have a defense. (4 RT 728.) Detective Horton said the witnesses described cold-blooded shootings and Enraca needed to give some explanation that the detectives could convey to the district attorney. (4 RT 730.)

When the detectives told Enraca he was being dishonest, Enraca said he wanted a lawyer. (4 RT 719-721.) Detective Schultz told Enraca to stop talking and that he did not want to hear anything further from Enraca. (4 RT 721.) When Enraca asked when he would see his lawyer, Detective Schultz said he did not know, since Enraca would have to pay for his lawyer. (4 RT 721.) When Enraca said he thought he would get an appointed attorney, Detective Schultz told Enraca that an attorney would be appointed in court at the arraignment and implied the arraignment would occur in 48 hours. (4 RT 722.) No further questioning occurred. (4 RT 722.)

Detective Schultz advised Detective Eric Spidle that Enraca had invoked and asked Spidle to take Enraca for picture and prints. (4 RT 723, 725, 739, 785.) After having Enraca photographed and printed, Detective Spidle began preparing the booking paperwork and let Enraca make a phone call to his girlfriend. (4 RT 743.) After the call and while Spidle was preparing the booking form, Enraca asked when he would get a lawyer and Detective Spidle explained the arraignment process, including appointment of counsel, and told Enraca the arraignment would occur in 48 to 72 hours. (4 RT 744.)

As Spidle continued working on the booking form, Enraca asked Detective Spidle if a reward had been offered and Spidle responded that he was unaware of any reward in Enraca's case. (4 RT 745.) Enraca said he thought there had been a reward which was why people were telling on him, and he said " 'I'm involved in this.' " (4 RT 746.) Detective Spidle stopped his booking form work and tried to cut Enraca off, saying he did

not know about any reward and that people were motivated by different things. (4 RT 746.) As Detective Spidle continued with his paperwork, Enraca said, “ ‘You know, it’s not how it went down.’ ” Enraca sounded like he was pleading with Detective Spidle. (4 RT 746.) Spidle responded that several people had given information and there were always different versions when there are multiple people present. (4 RT 746-747.)

Detective Spidle returned to his paperwork and asked Enraca about one of his tattoos. (4 RT 747, 817.) When Enraca explained the tattoo he also commented that no one had honor or respect anymore, and Spidle agreed with him and continued with the paperwork. (4 RT 748.) Enraca put his head down and said, “ ‘But that’s not how it went down, you know.’ ” (4 RT 748.)

Because it appeared to Detective Spidle that Enraca wanted to talk about the shootings, Spidle said that the other detective had advised him that Enraca had asked to speak to a lawyer, so he (Spidle) was not in a position to ask any questions about the shootings. (4 RT 749.) Spidle explained to Enraca that once he asked for an attorney, the detectives were not going to question him any further. (4 RT 749.)

Enraca then asked what would happen if he stated what had occurred, and Detective Spidle told Enraca he would get a tape recorder and tape any statement Enraca wanted to make, but also reiterated that he was not allowed to question Enraca because Enraca had asked for a lawyer. (4 RT 750.) Enraca said he wanted to tell Detective Spidle, but he did not want to say anything to involve anyone else. (4 RT 750.) Detective Spidle got a tape recorder and returned to the room. (4 RT 751.)

When Detective Spidle turned the tape recorder on, he started to describe the circumstances, by asking the time, and was interrupted by Enraca who said the shootings did not involve anyone else and “ ‘I did this.’ ” (4 RT 751-752.) Detective Spidle cut Enraca off, then went

through the date and time, and had Enraca confirm on tape that he and Spidle met that night, that Spidle had asked no questions about the shootings, and that Spidle agreed to tape record Enraca's statement after Enraca said he wanted to make a statement. (4 RT 752-754.) Detective Spidle also had Enraca confirm that Enraca had not been threatened or promised anything other than that the tape recording would be provided to the district attorney. (4 RT 754.)

Detective Spidle wanted to make sure that Enraca had been advised of his rights and asked Enraca if he knew his rights. Enraca said he knew his rights and did not want to have them read to him again. (4 RT 755.)

Enraca began by saying he did it and no one else was involved. He said, " 'I just got to face it. I'm caught, you know.' " (4 RT 756.) After describing his version of the shootings, Enraca reiterated that he had not been forced to talk and that Detective Spidle had not asked any questions about the shootings. (4 RT 761.) Enraca said, " 'I figure you guys already know. I might as well let you know the real story.' " (4 RT 761.) When asked why he chose to speak to Detective Spidle, Enraca said it was " '[b]ecause they're assholes,' " referring to Detectives Schultz and Horton. (4 RT 761-762.) Enraca also said that because Detective Spidle answered his question, he (Enraca) respected the detective. (4 RT 762.) Enraca said he knew his rights and explained that " 'I just know - - I just look at it as I'm caught. This happened. The consequences are there. Take them. You know?' " (4 RT 763.) Enraca said he was ashamed that he had been preaching to his friends to not do the things he had done. (4 RT 764.)

C. C. Trial Court Findings and Ruling

The trial court found that Enraca was adequately informed and aware of his rights under *Miranda*. (4 RT 896.) The trial court found that Detective Spidle was engaged in a legitimate booking process, Enraca initiated all of the conversations with Spidle, and Spidle told Enraca that he

(Spidle) could not question Enraca because Enraca had asked for an attorney. (4 RT 896-898.) The trial court found that Enraca knew, from what happened with Detectives Schulz and Horton, that by asking for an attorney, questioning would stop. The trial court found that Enraca wanted to talk to Detective Spidle despite his awareness of his rights. (4 RT 898.) Under the totality of the circumstances, the trial court found that Enraca freely, voluntarily, and intelligently waived his rights. (4 RT 898.)

The trial court found a violation of the Vienna Convention. (4 RT 898-899.) The court found no link between the violation and Enraca's *Miranda* waiver. (4 RT 899.)

The trial court denied Enraca's motion to suppress his statements. (4 RT 900.)

D. Analysis

In pressing his claim, Enraca re-asserts his position that he was misadvised of his right to counsel thereby voiding his subsequent post-invocation waiver, a position contrary to the trial court's findings and fully rebutted in the respondent's brief. In short, there was neither misadvice by the detectives, nor lack of understanding by Enraca. But he also claims he was improperly subjected to continued interrogation after invoking his right to counsel, contrary to the apparent concession in his opening brief that the evidence supported a finding that he initiated the communication (AOB 65). He cites this as another factor in asserting his post-invocation waiver was void. This claim is also contrary to the trial court's findings and the record.

Suspects who invoke the rights to counsel and to remain silent may not be subjected to further interrogation until counsel is made available or " 'the accused himself initiates further communication.' "

(*People v. Davis* (2005) 36 Cal.4th 510, 554, quoting from *People v. Sims* (1993) 5 Cal.4th 405, 440.)

Even if initiated by the suspect, statements made during a post-invocation interrogation are not admissible unless the prosecution shows that the statements followed a waiver of the right to counsel. (*People v. Sims, supra*, 5 Cal.4th at p. 440.)

In *Rhode Island v. Innis* (1980) 446 U.S. 291, 100 S.Ct. 1682, 64 L.Ed.2d 297, the Court held that interrogation subject to the *Miranda* safeguards included both “express questioning or its functional equivalent.” (*Id.* at p. 300-301.) The functional equivalent to express questioning is “any words or actions on the part of police (other than those attendant to arrest or custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect.” (*Id.* at p. 301, footnotes omitted.) However, the police are not accountable for the unforeseen results of their words or actions. (*Id.* at p. 302.)

When determining whether police words or actions are reasonably likely to elicit an incrimination response, the reviewing court considers primarily the perceptions of the suspect rather than the intent of the police. (*People v. Davis (supra)* 36 Cal.4th at p. 554.)

Enraca first points to the last statement Detective Schultz made to Enraca, after Enraca invoked his right to counsel, as improper interrogation. After Enraca invoked, Schultz directed Enraca to turn around (apparently for handcuffing) and told him he was going to jail for double homicides. (5 RT 721.) Schultz told Enraca to “ ‘shut your mouth’ ” and said , “ ‘I don’t want to hear another word out of you.’ ” (5 RT 721.) Enraca asked when he could see his lawyer and Schultz told Enraca that he (Schultz) did not know, explaining that he (Schultz) did not pay for Enraca’s lawyer. (5

RT 721.)² When Enraca said he thought he would get an appointed lawyer, Schultz responded:

“You can. When you go to court and get arraigned, one will be appointed to represent you. That’s when you can see your lawyer. Now, I suggest that for the next 48 hours that you deeply consider that. Is that all clear?”

(5 RT 722.)

Enraca claims that Schultz admitted his post-invocation statement to Enraca were calculated to get him to speak without a lawyer. (ASB 2, citing 5 RT 735, lines 3-8.) He is mistaken. Schultz acknowledged that his reference to the next 48 hours was a reference to the time before arraignment and appointment of counsel. In making the statement to Enraca, Schultz was suggesting Enraca consider the entire interview, including Enraca’s denial of involvement. (5 RT 722.) Schultz also stated that the time period would give Enraca an opportunity to speak to the detectives without counsel, but only “[i]f that was his choice.” (5 RT 735.)

Regardless of Schultz’s reasoning, after Enraca invoked, Schultz told Enraca to “ ‘shut your mouth’ ” and said he (Schultz) did not want to hear another word out of Enraca. (5 RT 721.) There is nothing about Schultz’s final words to Enraca that he should have known was reasonably likely to elicit an incriminatory response. While Schultz’s words might have caused Enraca to think, they were not reasonably likely to elicit an incriminatory response. As Schultz said, whether Enraca took the opportunity to speak further was his choice. (See *People v. Sapp* (2003) 31 Cal.4th 240, 264, 268 [detective properly stopped questioning despite telling defendant to think about it overnight].)

² Schultz explained that when Enraca asked “ ‘When am I going to see my lawyer?’ ” he (Schultz) thought Enraca’s use of “ ‘my lawyer’ ” implied that Enraca had or would obtain a private attorney. (5 RT 733-734.)

Even if Schultz's final statement were regarded as interrogation, it had no effect. While it may have caused Enraca to think further on his situation, Enraca did not respond to it, either with a confession or any other statement. When Enraca began talking to Spidle, he had talked to his girlfriend, one of the people Schultz had spoken to, and had clearly been thinking about Schultz's statements that he had talked to several of Enraca's friends, who named him as the shooter. Enraca's decision to engage Spidle in conversation was an intervening act breaking any causal connection to Schultz's last statement. (See *People v. Sapp*, *supra*, 31 Cal.4th at pp. 268-269 [defendant's decision to speak to detectives broke causal link between his statement and prior *Miranda* violation].)

Appellant next points to his own attempts to converse with Detective Spidle about the crimes as interrogation by Spidle. He first attempts to connect Schultz and Spidle by claiming a "coordinated message" was delivered to Enraca through a "good-cop-bad-cop" scenario. (SRB at p. 6.) While true that Schultz's interview with Enraca became heated and Spidle was low-key in responding to Enraca's conversational efforts, there is simply no evidence of any coordinated effort between Schultz and Spidle. Indeed, the evidence is to the contrary.

The Schultz interview became heated because Enraca was lying, Schultz and Horton knew Enraca was lying, and Enraca knew they knew it. When Schultz called Enraca a liar, Enraca invoked and the interview ended. (5 RT 719.) When the interview ended, there was no further interrogation; Schultz did not tell or attempt to get anyone to interrogate Enraca. (5 RT 722-273.) Because Schultz had his own paperwork to complete, he asked Detective Spidle, who had recently returned to the station, to get pictures and prints from Enraca, and prepare the booking form. (5 RT 723.) Schultz told Spidle that Enraca had invoked, but not that Enraca denied any involvement. (5 RT 724-725, 785.) Detective Spidle took Enraca for

photos and prints, then asked if Enraca wanted to make any telephone calls. (5 RT 743.) After getting approval from Schultz for Enraca to call his girlfriend and setting up the call, Spidle began preparing the booking form. (5 RT 743.) After Enraca made the call and while Spidle was preparing the booking form, Enraca began attempting to engage Spidle in conversation. (5 RT 743.)

There was simply no evidence of a ploy of any kind between Schultz and Spidle to continue interrogation of Enraca.

Enraca's claim that Spidle interrogated him also fails for lack of any evidentiary support. Enraca seems to suggest that any conversation between him and Spidle beyond booking questions was improper. (ASB 3.) That is incorrect. "Clearly, not all conversation between an officer and a suspect constitutes interrogation. The police may speak to a suspect as long as the speech would not reasonably be construed as calling for an incrimination response." (*People v. Clark* (1993) 5 Cal.4th 950, 985; see also *People v. Cunningham* (2001) 25 Cal.4th 926, 993.)

In *Clark, supra*, after the defendant invoked, he was driven to a hospital so police could to obtain a blood sample. On the way to the hospital, the defendant asked the transporting officers what amount of time in prison he could get for the crimes and one of the officers responded with his opinion as to the amount of time. Shortly after the officer's statement, the defendant made an admission and stated his willingness to be questioned. (*People v. Clark, supra*, 5 Cal.4th at pp. 981-982.) The defendant later contended that the officer's response to his prison time inquiry was prohibited interrogation. (*Id.* at p. 984.) This Court rejected the claim, stating there was "no reason for [the officer] to have known that his casual estimate of possible penalties would produce an incriminating response from this defendant." (*Id.* at p. 985.)

Enraca first asked Spidle when he (Enraca) would get a lawyer appointed. (5 RT 744.) Spidle explained the arraignment procedure, including appointment of counsel, and the general time involved, then continued working on the booking form. (5 RT 744-745.) As in *Clark*, there no reason for Spidle to have known his answer would produce an incriminating response. Indeed, it did not. Responding to Enraca's query was not interrogation.

Enraca then asked whether there had been a reward offered. (5 RT 745.) Spidle responded that he was unaware of a reward being offered, but it was possible. (5 RT 745.) When Enraca said that a reward was the reason people were telling on him and that he was " 'involved in this,' " Spidle told Enraca that he (Spidle) did not know what people had said or whether a reward had been offered. (5 RT 746.) When Enraca said " 'it's not how it went down,' " Spidle told Enraca that he was not aware of how things happened, but that when several people view something, there are always different versions. (5 RT 746-747.)

As Spidle continued with the booking form he came to a place on the form for marks or tattoos or scars, observed a tattoo on Enraca's shoulder and asked Enraca about the tattoo so he (Spidle) could accurately describe it on the booking form. (5 RT 747-748, 817.) After he told Spidle about his tattoo, Enraca said no one had any honor or respect. (5 RT 748.) Spidle agreed saying people will tell on friends to stay out of trouble and that was just the way it is. (5 RT 748.) As Spidle continued with the booking sheet, Enraca put his head down and said " 'that's not how it went down' ." (7 RT 748.)

At that point, Spidle stopped again and told Enraca that because Enraca had asked for a lawyer, Spidle was not able to ask any questions about the offense. (5 RT 748.) Spidle explained that once Enraca asked for a lawyer, " 'we're not going to question you any further about how it went

down.’ ” (5 RT 749.) Spidle explained to Enraca that it was not his (Spidle’s) intent to sit there and ask Enraca what happened. (5 RT 749.) Enraca asked what would happen if he (Enraca) simply stated what had happened. (5 RT 749.) Spidle said he would tape record any statement Enraca wanted to make and provide it to the District Attorney. (5 RT 749-750.) Spidle also restated that he (Spidle) was not allowed to ask any questions because Enraca had asked for an attorney. (5 RT 750.) Enraca said he wanted to make

a statement, but would not implicate anyone else. (5 RT 750.) When Spidle said he could not ask questions about anyone else’s involvement, but he would get a tape recorder if Enraca wanted to give his version of the events, Enraca said that was what he wanted to do. (5 RT 750-751.)

After getting the tape recorder, Spidle turned it on and began an introduction which Enraca interrupted, saying he did not want to involve anyone else and he did this. (5 RT 752.) Spidle stopped Enraca and completed the introduction in which Enraca agreed that Spidle had not asked any questions about the incident, that Spidle was completing the booking sheet when Enraca said he wanted to make a statement, and the Spidle had said he would record the statement and provide it to the District Attorney. (5 RT 753-754.) Enraca confirmed that he knew he was under arrest for murder, that he had been read and understood his rights, and that he did not want his rights repeated, saying,. “ ‘Nah. I know my rights.’ ” (5 RT 755.)”

The record demonstrates that Enraca instigated every exchange with Spidle, who responded in a manner which was not reasonably likely to elicit an incriminatory response. Indeed, Spidle testified when Enraca began to press the issue of a reward and honor, Spidle responded in a manner to try to cut off any further statements by Enraca. (5 RT 746, 814, 823.) Spidle’s responses were short, he agreed with Enraca, and he did not

solicit and call for any further exchange. Indeed, on each occasion, Spidle went back to preparing the booking form, giving a non-verbal indication that he was not seeking or expecting anything further from Enraca.

Moreover, Enraca himself explained what prompted him to make his statement. After indicating that he had been advised of, and understood his rights, Enraca said he wanted to make his statement to make it clear no one else was involved and because “ ‘I just got to face it. I’m caught, you know.’ ” (5 RT 756.) After giving his statement Enraca said he did not give his statement because he was forced or questioned, but because “ ‘I figure you guys already know. I might as well let you know the real story.’ ” (5 RT 761.)

There was no improper post-invocation interrogation from either Schultz or Spidle.

CONCLUSION

For the foregoing reasons, and for the reasons set forth in respondent's brief, Enraca voluntarily and intelligently waived his rights after instigating further communication, and there was no error in admitting his statements.

Dated: March 24, 2010

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached Respondent's Supplemental Brief uses a 13 point Times New Roman font and contains 4,229 words.

Dated: March 24, 2010

EDMUND G. BROWN JR.
Attorney General of California

A handwritten signature in black ink that reads "William M. Wood". The signature is written in a cursive style with a large initial 'W'.

WILLIAM M. WOOD
Deputy Attorney General
Attorneys for Respondent

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: ***People v. Sonny Enraca***

No.: **S080947**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On March 24, 2010, I served the attached ***RESPONDENT'S SUPPLEMENTAL BRIEF*** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on March 24, 2010, at San Diego, California.

Terri Garza
Declarant

Terri Garza
Signature

