Recent Case Report

People v. Chun

(2007) 155 Cal.App.4th 170

ISSUE

While questioning a 16-year old murder suspect, did an officer engage in coercive interrogation tactics?

FACTS

At about 9 P.M., three people in a Mitsubishi car were waiting at a stop light at an intersection in Stockton when four men in a Honda pulled up beside them. When the light changed, three of the people in the Honda started firing into the Mitsubishi. At least six rounds were fired, and two of them—a .38 and a .44—struck the backseat passenger. He was killed. The other two victims were also hit, and both suffered serious, life-altering injuries.

The shooting appeared to have been gang-related. The survivors identified the driver of the Honda as "T-Bird," known to the police as a local gangster. He is still at large. Investigators theorized that the shooters had been trying to kill a member of a rival gang who sometimes drove the Mitsubishi.

About two months later, Stockton police arrested Chun and two other men who were suspects in the shooting. All three were transported to the police station for questioning. Chun, who was 16-years old, waived his *Miranda* rights and agreed to talk to the officers.

At first he claimed he had not been inside the Honda, but one of the officers told him that his two associates had said otherwise. The officer also told him that "no matter what you say to me tonight, you are going to prison," but that his sentence would depend on whether he told the truth. Said the officer:

> [T]his is gonna depend on whether you're gonna go to prison for the rest of your life or just gonna go to prison for a couple of years or couple of months, whatever. . . . But as of now what I have on you is you're gonna go to prison for the longest time if you don't speak out.

The officer also discussed the harsh realities of prison life:

> When you go to prison, you ain't gonna be tough 'cause on a soaking wet day you maybe weighing 150 pounds, that's it. You get guys that are huge. Okay? I'm not trying to scare you or nothing like that. Just be aware of it . . .

Chun then admitted that he was one of the occupants of the Honda, but denied that he had fired any shots. The officer responded by telling him that his associates were contradicting that, and he urged Chun "to show some honesty":

> The thing is that, you know, I gotta write all these things down. I'm not writing right now, but I will 'cause I've gotta give it to the judge, hey, judge, this kid's, you know, he's 16 years old, he can learn from his mistake, you know, help him out here. You know what I mean? You're 16 years old, man. This is, this is a murder. This is as serious as it gets.

When Chun continued to deny that he had fired any shots, the officer told him that he knew there were two guns in the car, "a bigger gun and a smaller gun," and that his associates were claiming that he had fired the smaller one. Then the officer said, *"[I]f your gun didn't kill those people there, it's not your gun. I've been trying to tell you that."* After further urging by the officer to "just tell the truth," and "learn from your mistake," Chun admitted that he had fired two rounds from the .38.

Chun was tried as an adult, and his admission was used against him. He was found guilty of second degree murder and of being an active participant in a criminal street gang.

DISCUSSION

Chun contended that his admission should have been suppressed because it resulted from an implied promise of leniency. The court agreed.

It is settled that a statement will be suppressed if it was involuntary, meaning the suspect was coerced into making it. As the California Supreme Court put it, "Involuntariness means the defendant's free will was overborne."[1]

It is also settled that a statement is not involuntary merely because officers put noncoercive pressure on a suspect to give a true statement. As the Court of Appeal observed, "When a person under questioning would prefer not to answer, almost all interrogation involves some degree of pressure."[2]

Consequently, the court in *Chun* ruled that the officer's comments about the "harsh realities" of prison life did not constitute coercion. It also ruled that "[t]elling defendant that what he said would make the difference between life in prison or only a few years or months was not a false promise of leniency."

But the court ruled that the officer crossed the line because, after misleading Chun into thinking that the .38 was not the murder weapon, he implied that Chun would not face a lengthy prison term if he admitted that he had fired it. Said the court, "[The officer's] statements were both factually and legally false. Both known guns were murder weapons and the law of aiding and abetting does not require one to be the actual shooter to be convicted of murder."

The court also ruled that the officer engaged in coercive interrogation techniques when he "offered to advocate for defendant before the judge." "In effect," said the court, the officer "falsely promised defendant more lenient treatment in a murder case . . . if he cooperated and admitted he had the smaller gun."

Consequently, the court reversed Chun's murder conviction on grounds that his admission "should have been excluded because it was procured by a false promise of leniency."

COMMENT

The United States Supreme Court has consistently ruled that a statement is involuntary only if officers placed so much pressure on a suspect to make a statement that he was unable to resist. As the Court observed in *Oregon* v. *Elstad,* a statement is involuntary only if it was obtained "by techniques and methods offensive to due process,

[1] *People* v. *Depriest* (2007) 42 Cal.4th 1, 34. ALSO SEE *People* v. *Guerra* (2006) 37 Cal.4th 1067, 1093.

[2] *People* v. *Andersen* (1980) 101 Cal.App.3d 563, 575.

or under circumstances in which the suspect clearly had no opportunity to exercise a free and unconstrained will."[3]

It is also settled that a statement is not involuntary merely because it resulted from an officer's lies or deception. Thus, the United States Supreme Court pointed out that it "has refused to find that a defendant who confesses, after being falsely told that his codefendant has turned State's evidence, does so involuntarily,"[4] and that "mere strategic deception" is not coercive.[5] The California Supreme Court has made this point repeatedly. For example, it has noted that "[n]umerous California decisions confirm that deception does not necessarily invalidate a confession,"[6] and "[w]here the deception is not of a type reasonably likely to procure an untrue statement, a finding of involuntariness is unwarranted."[7]

For example, the courts have ruled that officers did not engage in coercive interrogation tactics when they falsely told the suspect that his accomplice had been captured and had confessed, [8] that his fingerprints had been found on the getaway car,[9] that a gunshot residue test showed that he had recently handled a gun,[10] and that he had been positively ID'd by the victim.[11] In fact, in one case the California Supreme Court ruled that officers did not engage in coercive interrogation tactics when they gave a murder suspect a bogus "Neutron Proton Negligence Intelligence Test" and claimed it absolutely proved that he had recently fired a gun.[12]

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[3] (1985) 470 U.S. 298, 304. ALSO SEE *People* v. *Andersen* (1980) 101 Cal.App.3d 563, 581 ["The critical element in coerced confession is compulsion, an overcoming of the will of the suspect which forces or tricks her into saying something she would not otherwise be willing to say."]; *People* v. *Lee* (2002) 95 Cal.App.4th 772, 782 ["The statement of a suspect is coerced if it is the product of police conduct which overcomes the person's free will."]; *Pollard* v. *Galaza* (9th Cir. 2002) 290 F.3d 1030, 1033 ["[A] confession is involuntary only if the police use coercive means to undermine the suspect's ability to exercise his free will."].

[4] *Oregon* v. *Elstad* (1985) 470 U.S. 298, 317.

[5] *Illinois* v. *Perkins* (1990) 496 U.S. 292, 297.

[6] *People* v. *Thompson* (1990) 50 Cal.3d 134, 167.

[7] *People* v. *Farnam* (2002) 28 Cal.4th 107, 182. *People* v. *Maury* (2003) 30 Cal.4th 342, 411 ["[d]eception does not necessarily invalidate an incriminating statement."]; *People* v. *Lee* (2002) 95 Cal.App.4th 772, 785 ["California courts have long recognized it is sometimes necessary to use deception to get at the truth. [A] deception which produces a confession does not preclude admissibility of the confession unless the deception is of such a nature to produce an untrue statement."]; *People* v. *Cahill* (1994) 22 Cal.App.4th 296, 315; *People* v. *Musselwhite* (1998) 17 Cal.4th 1216, 1240 ["Lies told by the police to a suspect under questioning can affect the voluntariness of an ensuing confession, but they are not per se sufficient to make it involuntary."]; *People* v. *Chutan* (1999) 72 Cal.App.4th 1276, 1280 ["Police officers are at liberty to utilize deceptive stratagems to trick a guilty person into confessing. The cases from California and federal courts validating such tactics are legion."]; *People* v. *Felix* (1977) 72 Cal.App.3d 879, 886 ["The general rule throughout the country is that a confession obtained through use of subterfuge is admissible, as long as the subterfuge used is not one likely to produce an untrue statement."].

[8] *Frazier* v. *Cupp* (1969) 394 U.S. 731, 739.

[9] *People* v. *Watkins* (1970) 6 Cal.App.3d 119, 124-5.

[10] *People* v. *Parrison* (1982) 137 Cal.App.3d 529, 537.

[11] *People* v. *Pendarvis* (1961) 189 Cal.App.2d 180, 186; *Amaya-Ruiz* v. *Stewart* (9th Cir. 1997) 121 F.3d 486, 495.

[12] *People* v. *Smith* (2007) 40 Cal.4th 483, 506 ["[I]t does not appear that the tactic was so coercive that it tended to produce a statement that was involuntary or unreliable."].

We want you to lie

Although there is no material difference between the facts in *Chun* and the other cases in which deception has been employed, the court was disturbed that the officer made the following statement: "[I]f your gun didn't kill those people there? It's not your gun. I've been trying to tell you that." The court seemed to interpret these words to mean: *You should go ahead and admit that you fired the .38 even though you didn't. After all, since it wasn't the murder weapon, you've got nothing to lose by lying. And if you cooperate with us and lie, we'll even ask the judge to go easy on you.*[13]

Even if that was the thrust of the officer's statement, the question arises: What pressure did it place on Chun? The officer made it clear that nothing Chun said would keep him out of prison. The only question was how much time he would serve. And given the magnitude of the crimes, Chun must have known that he was going to serve a substantial sentence as an aider and abettor to a murder, even if he hadn't fired the murder weapon.

Moreover, it is reasonable to infer that, during the two months following the shootings, Chun would have become aware that two other people in the car had been seriously injured. Thus, even if he believed that he had not fired the fatal rounds, he would have known that he was responsible for the injuries to one or both of the other occupants. And, given the seriousness of their injuries, he must have known that he could be charged with murder in the not unlikely event that either of them eventually succumbed to their injuries. And even if they both survived, he could not have reasonably expected leniency for such an atrocious crime.

Consequently, it is quite apparent that, even if the officer had mislead Chun into thinking that the .38 was not the murder weapon, he did not mislead Chun into believing that he would get off easy if he confessed to firing it.

False promises?

The court also ruled that the officer "falsely promised defendant more lenient treatment in a murder case—a chance to learn from his mistake—if he cooperated and admitted he had the smaller gun." The court was mistaken. The officer promised Chun nothing. He told him that he would fare better in court if his gun did not kill the victim. This was a true statement, and it was an appropriate one. For example, in *People* v. *Holloway*, the California Supreme Court ruled that, "[t]o the extent [the detective's] remarks implied that giving an account involving a blackout or accident might help defendant avoid the death penalty, he did no more than tell defendant the benefit that might flow naturally from a truthful and honest course of conduct."[14] Similarly, the Ninth Circuit has observed, "It is not enough, even in the case of a juvenile, that the police

[13] **NOTE**: The person who transcribed the recording of the interview inserted a question mark after "if your gun didn't kill those people there." But the statement does not call for a question. After the question mark, the transcriber began a new sentence, "It's not your gun." If the two sentences had not been split by the transcriber, the officer's words might not have sounded as if he was representing that the .38 was not the murder weapon. Instead, it would have sounded like this, "*If* your gun didn't kill those people there, *if* it's not your gun. I've been trying to tell you that."

[14] (2004) 33 Cal.4th 96, 116. ALSO SEE *People* v. *Hill* (1967) 66 Cal.2d 536, 549 ["When the benefit pointed out by the police to a suspect is merely that which flows naturally from a truthful and honest course of conduct, we can perceive nothing improper in such police activity."].

indicate that a cooperative attitude would be to the benefit of an accused unless such remarks rise to the level of being threatening or coercive."[15]

Moreover, the courts in California routinely hold that an officer's promise will not render a subsequent statement involuntary if the officer promised nothing specific.[16] And, as noted, the officer in *Chun* promised nothing other than the possibility of a lighter sentence if his gun was not the murder weapon.

The motivating cause requirement

Even if an officer engaged in coercive interrogation tactics, a suspect's subsequent statement will not be suppressed unless the officer's tactics caused the suspect to make it. As the California Supreme Court explained, "Coercive police activity does not itself compel a finding that a resulting confession is involuntary. The statement and the inducement must be causally linked."[17]

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[15] *Juan H.* v. *Allen* (9th Cir. 2005) 408 F.3d 1262, 1273. ALSO SEE *U.S.* v. *Mashburn* (4th Cir. 2005) 406 F.3d 303, 310 ["[T]he agents simply informed Mashburn of the gravity of his suspected offenses and the benefits of cooperation under the federal system."].

[16] See *People* v. *Hurd* (1998) 62 Cal.App.4th 1084, 1091 ["Because none of the detectives' statements indicated that the district attorney would act favorably in specific ways if appellant cooperated, they did not constitute impermissible promises of favorable action."]; *People* v. *Ramos* (2004) 121 Cal.App.4th 1194 [officer told the suspect his cooperation would be brought to the DA's attention "for consideration"]; *People* v. *Groody* 1983) 140 Cal.App.3d 355, 359 ["[The detective's] promise to talk to the district attorney about 'special consideration' for appellant, and his statement that one such consideration might be for the district attorney to charge only one burglary, was no more than the pointing out of benefits which might result naturally from a truthful and honest course of conduct. [The detective] expressly informed appellant that he could make no guarantees of leniency."]; *People* v. *Boyde* (1988) 46 Cal.3d 212, 239 ["[The detective] repeatedly and clearly stated that he had no authority to make any promise of leniency regarding the pending robbery-kidnap charges, but could only pass information on to the district attorney."]; *People* v. *Seaton* (1983) 146 Cal.App.3d 67, 74 ["[The detective] testified he told defendant the district attorney would make no deals unless all of the information defendant claimed to have was first on the table. We conclude no implied promise of a 'deal' or leniency resulted from these conversations."]; *People* v. *Anthony J.* (1980) 107 Cal.App.3d 962, 969 ["[The detective's] response that the juvenile court would be told that defendant had been cooperative was a truthful response to the defendant's question [which was 'what would he get?' if he cooperated]."]; *People* v. *Jones* (1998) 17 Cal.4th 279, 298 ["[T]he detective's offers of intercession with the district attorney ['telling the district attorney that defendant had been honest'] amounted to truthful implications that his cooperation might be useful in later plea bargain negotiations."]; *People* v. *Higareda* (1994) 24 Cal.App.4th 1399, 1409; *People* v. *Williams* (1984) 157 Cal.App.3d 145, 152; *U.S.* v. *Coleman* (9th Cir. 2000) 208 F.3d 786, 791 ["If I knew anything, now is the time to tell that. They can tell the prosecutor to give me little or no time." Court: "Such an inducement to cooperate is insufficient to establish involuntariness."].

[17] *People* v. *Guerra* (2006) 37 Cal.4th 1067, 1093. ALSO SEE *Colorado* v. *Connelly* (1986) 479 U.S. 157, 165 ["Absent police conduct causally related to the confession, there is simply no basis for concluding that any state actor has deprived a criminal defendant of due process of law."]; *Schneckloth* v. *Bustamonte* (1973) 412 U.S. 218, 224 ["Under [the 'but for'] test, virtually no statement would be voluntary because very few people give incriminating statements in the absence of official action of some kind."]; *People* v. *Benson* (1990) 52 Cal.3d 754, 778-9 ["The requisite causal connection between promise and confession must be more than 'but for': causation-in-fact is insufficient."]; *People* v. *Maury* (2003) 30 Cal.4th 342, 404-5 ["The statement and the inducement must be causally linked."]; *People* v. *Thompson* (1980) 27 Cal.3d 303, 328 ["If

With this in mind, consider that Chun did not admit firing the .38 immediately after the officer made his "if your gun didn't kill those people" statement. Instead, Chun responded by saying "Huh," then continued to lie. After that, the officer had to repeatedly try to get him to tell the truth by saying such things as, "Don't try to cover up, don't try to lie"; "don't do that to yourself man. Just, just tell the truth"; "learn from your mistake"; and "This is a big lesson. The biggest lesson of your life." Eventually, Chun admitting firing the .38, but the record indicates that the statement in question was not the motivating cause. Instead, it appears that the real motivation behind his admission was the realization that he was in serious trouble, and that he had better start telling the truth.

Also note that when Chun finally made the statement, he did not merely parrot the admission that the officer had been seeking; i.e., that he had fired the .38. Instead, he admitted that he had fired it twice and, more importantly, he then started providing the officer with a detailed account of the shooting. This is a strong indication that he was motivated by the realization that it was time to tell the truth.

Chun's callousness

Sometime after making the statement, Chun said several things to jail personnel that demonstrated a callousness that is rare, even in today's street gang culture. Among other things, he told a jail supervisor:

> You don't know who you are fucking with, nigga, this is TRG [his gang was known as the Tiny Rascals Gangsters], Bang, bang, motherfucker. That's how we do it. Yeah, nigger. Wait till I get out. Bang to the dome. Fuck that. You'll see when I get out.

Those are not the words of a person whose will was overwhelmed by an officer's brief remark in the course of an interrogation.

The evidence demonstrates that Chun is a callous, unrepentant killer who was unconcerned about what he and his associates did to three innocent people. It is therefore especially distressing that this court went out of its way to interpret the officer's words as being coercive, which resulted in its reversal of Chun's conviction for second degree murder. We hope the California Supreme Court takes a close look at this misguided decision. POV

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the [coercive] pressure or inducement was 'a motivating cause' of the decision to confess, the confession is involuntary and inadmissible as a matter of law."].