

Recent Case Report

People v. Perdomo

(2007) __ Cal.App.4th __ [2007 WL 404000]

ISSUE

Did officers utilize coercion in obtaining a statement from the badly-injured driver of a car involved in a fatal traffic accident?

FACTS

At about 2:45 A.M., Gerson Perdomo was driving a car on the 101 freeway near Simi Valley. Two other men were in the car. All three had spent the night at a bar drinking heavily. While driving at an estimated 80 m.p.h., Perdomo lost control of the car, which eventually crashed into a tree. One of the passengers was DOA. Perdomo and the other passenger were critically injured and were airlifted to the UCLA Medical Center. (Perdomo's blood-alcohol content was tested at .221.)

Because of Perdomo's extensive injuries, his doctors would not permit CHP officers to question him for the next three days. On the fourth day, officers were allowed to interview him for 20 minutes in the intensive care unit.¹ He was still connected to I.V.'s and monitors, and he was in "obvious pain." He also appeared to have been under the influence of morphine from an injection about five hours earlier.

In the course of the interview, Perdomo admitted he had been driving the car, saying, "I'm not gonna bullshit you guys. I was driving [the] car." He also admitted that he might have smoked marijuana that day.

Perdomo was charged with, among other things, felony vehicular manslaughter while intoxicated. Although he didn't "bullshit" the officers, he laid it on thick at his trial, claiming that he "did not know" whether he had been driving the car, and he did not remember having given the statement to the officers. He was, nevertheless, convicted.

DISCUSSION

Perdomo contended his statement should have been suppressed because, due to his mental condition at the time, it was involuntary. The court disagreed.

It is settled that a suspect's statement is involuntary if it was obtained "by techniques and methods offensive to due process, or under circumstances in which the suspect clearly had no opportunity to exercise a free and unconstrained will."²

¹ **NOTE:** Although Perdomo was probably not "in custody" for *Miranda* purposes, the officers obtained a waiver at the start of the interview.

² *Oregon v. Elstad* (1985) 470 U.S. 298, 304. ALSO SEE *Culombe v. Connecticut* (1961) 367 U.S. 568, 601-2 ["The ultimate test" of voluntariness is as follows: "Is the confession the product of an essentially free and unconstrained choice by its maker?"]; *People v. Guerra* (2006) 37 Cal.4th 1067, 1093 [a statement is involuntary if the "defendant's will was overborne by the circumstances surrounding the giving of a confession."].

Although voluntariness depends mainly on what the officers said and did,³ the courts will also consider the suspect's mental state because an impaired suspect may be more susceptible to coercive pressures. In the words of the United States Supreme Court, "The determination depends upon a weighing of the circumstances of pressure against the power of resistance of the person confessing."⁴

In examining Perdomo's "power of resistance," the court noted that, while he was certainly in pain and possibly under the influence of morphine, his mental condition was far from fragile. As the court pointed out:

Nothing on the tape [of the interview] shows appellant's thinking was impaired by the medications. Appellant's speech is slow and deliberate, but is not slurred or incoherent. Each of appellant's answers is appropriate to the question asked. In some instances, his answers were remarkably detailed.

The court also noted that Perdomo's physicians had determined that he was sufficiently "alert" and "oriented" to undergo questioning.

The court then examined the manner in which the officers questioned Perdomo and concluded there was simply no evidence of coercion. Among other things, it mentioned that the interview "lasted a maximum of 20 minutes"; the officers did not pressure Perdomo to talk with them; they posed their questions in a "calm, deliberate manner"; and their voices were "very quiet and subdued," "conversational and not threatening."

Consequently, the court ruled that Perdomo's statement was voluntary. POV

³ *Colorado v. Connelly* (1986) 479 U.S. 157, 167 ["[C]oercive police activity is a necessary predicate to the finding that a confession is not 'voluntary'"]; *People v. Benson* (1990) 52 Cal.3d 754, 778 ["A finding of coercive police activity is a prerequisite to a finding that a confession was involuntary"].

⁴ *Dickerson v. United States* (2000) 530 U.S. 428, 434. ALSO SEE *People v. Smith* (2007) __ Cal.4th __ [2007 WL 313880] ["mental condition is relevant to an individual's susceptibility to police coercion"].