

People v. Perez

(2016) __ Cal.App.4th __ [2016 WL 104712].

Issue

Was a murder suspect's confession voluntary, or was it the result of a promise of leniency?

Facts

One evening in Indio, Christopher Jasso decided to commit an armed robbery, and he enlisted his friend Fabian Perez to be his getaway driver. Jasso ultimately decided to rob a cab driver and, after flagging one down, he got into in the backseat, pulled out a .25 caliber handgun and shot the driver in the head. The driver, Carlos Cardona, was killed. Jasso then took Cardona's wallet and, after Perez picked him up, they split the loot, about \$300. Perez later disposed of the gun.

Searching the taxi, investigators found a .25 caliber shell casing on the driver's seat and a newspaper in the back seat. They then checked the area for surveillance cameras and located one outside a nearby convenience store. As they watched the video, they saw Jasso walk into the store just before the murder, buy something, then get into Cardona's taxi.

Next they obtained a warrant to search Jasso's home where they found (1) a wallet that matched the description of Cardona's wallet; (2) clothing that matched the clothing that Jasso was wearing when he entered the store; and (3) two spent .25 caliber shell casings which, according to forensics, had been fired from the same gun that was used to kill Cardona. Forensics also found Jasso's fingerprints on the newspaper that was left in the cab.

Investigators later interviewed one of Jasso's friends who told them that Perez had admitted to him that he was Jasso's accomplice and that Jasso was the shooter. He also said the murder weapon belonged to Perez. After an unproductive search of Perez's home, officers obtained his consent to accompany them to the police station for questioning.

During the first 25 minutes of the interview, Perez denied any involvement in the crimes. After that, one of the detectives made the following comments to Perez: [Note: This is a highly edited version of the transcript.]

- We know that you were present when the murder occurred but that "you didn't do it." "We don't want you. We're not after you." "I don't want you to go to jail for murder. Okay. I don't want you to ruin your life." "We're trying to give you the chance to save yourself."
- "You can go home today. I'm telling you, you can go home today. You can live the life that you want to live. You put yourself in a situation, something really bad happened, I don't think you were part of that."
- If you are honest, "we are not gonna charge you with anything. Simply that's it." "You be honest, you tell the truth." "You'll have your life, maybe you'll go into the Marines and you'll chalk this up to a very scary time in your life."

Perez then admitted that he assisted Jasso in the robbery, but that the murder of the taxi driver was unplanned. After Perez was charged with the robbery and murder, he filed a motion to suppress the statements on grounds that they were involuntary. The

trial court denied the motion and Perez was found guilty of murder and sentenced to life without parole. (Jasso was tried separately. He was found guilty and sentenced to death.)

Discussion

On appeal, Perez argued that his motion to suppress should have been granted because his statement was the product of impermissible police interrogation tactics. Specifically, he contended that, as the result of the detective's promise not to charge him if he was honest, his subsequent confession was involuntary. The court agreed.

As a general rule, a statement is voluntary if the suspect made it freely. Although the words "freely" and "voluntary" might suggest that a statement is voluntary only if it was spontaneous or even impulsive, that is not the case.¹ Nor is it true that a statement is voluntary only if it was the product of a rational and unburdened mind.² Instead, it is more accurate—or at least more helpful—to say that a statement is voluntary if it was not *involuntary*.

There are two circumstances that must exist for a statement to be deemed involuntary: (1) the interrogation must have been coercive in nature, and (2) the coercion must have played a dominant role in the suspect's decision to make the statement.³ In *Perez*, this second requirement was plainly met because Perez made his incriminating statement shortly after the detective told him that he would not be charged, and also because there were no intervening circumstances. Consequently, the central issue was whether the detective's comments to Perez constituted coercion.

An officer's words or conduct will be deemed psychologically coercive if they generated such stress that the suspect would have felt compelled to confess or make a damaging admission.⁴ Psychological coercion will often result if an officer expressly or impliedly promised to do something that the suspect wanted desperately if he made a truthful statement; e.g., his freedom, a light sentence. Psychological coercion may also result if an officer said or implied that he will withhold such assistance if the suspect refused to make a truthful statement. On the other hand, it is not inherently coercive for officers to inform a suspect of the realities of his predicament, such as possible charges and the range of sentences he is facing. But they must not do so in a coercive manner and

¹ See *Watts v. Indiana* (1949) 338 U.S. 49, 53 ["A statement to be voluntary of course need not be volunteered."]; *Schneekloth v. Bustamonte* (1973) 412 U.S. 218, 224 ["[V]ery few people give incriminating statements in the absence of official action of some kind."].

² See *Colorado v. Connelly* (1986) 479 U.S. 157, 166 ["Only if we were to establish a brand new constitutional right—the right of a criminal defendant to confess to his crime only when totally rational and properly motivated—could respondent's present claim be sustained."].

³ See *Colorado v. Connelly* (1986) 479 U.S. 157, 164 ["Absent police conduct causally related to the confession, there is simply no basis for concluding [that the confession was involuntary]."]; *People v. McCurdy* (2014) 59 Cal.4th 1063, 1088 [although the deputy impliedly promised leniency, "nothing in the record suggests that was defendant's motivation to speak with the officers"]; *People v. Neal* (2003) 31 Cal.4th 63, 84 [the court indicated that the test is whether the coercion played the "dominant role" in producing the statement].

⁴ See *Culombe v. Connecticut* (1961) 367 U.S. 568, 576 [coercion acts as a "suction process" that has "drained [his] capacity for freedom of choice"]; *Arizona v. Fulminante* (1991) 499 U.S. 279, 287 ["coercion can be mental as well as physical, and the blood of the accused is not the only hallmark of an unconstitutional inquisition"]; *Blackburn v. Alabama* (1960) 361 U.S. 199, 206 ["[T]he efficiency of the rack and the thumbscrew can be matched, given the proper subject, by more sophisticated modes of persuasion."].

they must not promise or threaten a particular sentence.⁵ Nor is it inherently coercive to promise the suspect that officers would notify a prosecutor or judge that he had given a truthful statement, so long as the suspect was not told that he would receive something specific in return.⁶

In *Perez*, it was clear that the detective did not merely discuss potential sentences or promise to talk to prosecutors—he expressly promised Perez that he would not be charged if he gave a truthful statement. As the court explained, the detective “told Perez, ‘We are not gonna charge you with anything. Simply that’s it.’ The sergeant did far more than simply exhort Perez to tell the truth and promise to make a charging *recommendation* to the prosecutor. He clearly promised Perez that Perez would not be charged with a crime.” Accordingly, the court ruled that Perez’s statement was involuntary and that it should have been suppressed.

Comment

In another recent case, *People v. Peoples*,⁷ the California Supreme Court had to decide whether Stockton police officers had utilized coercion in obtaining an incriminating statement from Peoples who, during a five month crime spree, committed two burglaries, three robberies, and four murders. After Peoples was arrested for the crimes, he was questioned for about 12 hours, and during the first ten hours he denied any involvement in the crimes. Then one of the detectives notified him that his wife had “implicated” him in the crimes, and the detective showed him pictures of his family, pleading with him “not to make his family’s life any more difficult than he already had.” Peoples then led the detectives to the murder weapon. It was also revealed that, during the interview, Peoples “showed signs of physical and mental exhaustion; sweating, pulling out his hair, rubbing his skin, twitching his facial muscles, grinding his teeth, and at times appearing to fall asleep.”

As for threatening Peoples that they would “drag” his wife into the case if he did not confess, the court ruled that this did not constitute a threat because the detective “did not suggest that they would charge his wife with a crime.” As for Peoples’ mental state, the court acknowledged that the interview was lengthy, and that Peoples “showed some signs of fatigue,” but there were some offsetting circumstances; specifically, he “was given numerous breaks, drinks, and food, and he was offered the chance to speak with a lawyer numerous times.” Thus, the court concluded that “the prosecution met its burden of

⁵ See *People v. Daniels* (1991) 52 Cal.3d 815, 863 [“There is nothing improper in confronting a suspect with the predicament he or she is in”]; *People v. Flores* (1983) 144 Cal.App.3d 459, 469 [“truthful and commonplace statements of possible legal consequences, if unaccompanied by threat or promise, are permissible”]; *People v. Cahill* (1994) 22 Cal.App.4th 296, 311 [“The critical question is: when does a representation in the course of an interrogation about the penal consequences of silence or untruthfulness amount to a threat or promise?”].

⁶ See *People v. Carrington* (2009) 47 Cal.4th 145, 174 [“The interviewing officers did not suggest they could influence the decisions of the district attorney, but simply informed defendant that full cooperation might be beneficial in an unspecified way.”]; *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.”].

⁷ (2016) __ Cal.4th __ [2016 WL 423751].

establishing by a preponderance of the evidence that defendant's statement was not coerced."⁸ POV

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⁸ **NOTE:** In Peoples' possession when he was arrested was a folder labeled "Biography of a Crime Spree" which contained newspaper clippings about the crimes, and the following comments: "Some of the inserts in this scrapbook were merely for the motive of revenge, some was to support my family when I was unemployed. Some of them started out to be one thing and turned into something a little more extreme. I have to admit I've always wanted to murder someone, and the idea of a crime spree had appealed to me for some time now, hence, the crime spree. I guess we will see where it goes. (I never thought the two people in the Village Oaks store would die, after all, I only shot them two times each. Ha! Ha!."