People v. Villa-Gomez

(2017) __ Cal.App.5th __ [2017 WL 930816]

Issue

If a sheriff's deputy asks a prisoner about his gang membership during the booking process, are his responses admissible to prove his gang affiliation as to a crime he committed later?

Facts

Villa-Gomez was booked into the Yuba County Jail on an immigration hold. During the booking process, he was asked if he was a member of a gang and, if so, which one. He said he was a Norteño. A few hours later, he assaulted another prisoner who had supposedly disrespected the Norteños. As the result, he was charged with assault by means of force likely to produce great bodily injury. In addition, it was alleged that he committed the crime for the benefit of a criminal street gang, which made him eligible for a three-year sentence enhancement.[1]

At Villa-Gomez's trial on the assault charge, the prosecution was able to prove that the crime was gang-related based on testimony from a sheriff's deputy who qualified as a street gang expert. Specifically, the deputy testified that he believed that Villa-Gomez was a Norteño based, in part, on his admission of membership during booking. Villa-Gomez was found guilty of assault, and the gang enhancement was affirmed. As the result of the enhancement, he was sentenced to an additional three years in prison.

Discussion

On appeal, Villa-Gomez argued that his admission that he was a Norteño should have been suppressed because it was obtained in violation of *Miranda*. The court disagreed.

It is settled that officers must obtain a *Miranda* waiver before questioning a suspect who is in custody if the question was "reasonably likely to elicit an incriminating response."[2] There is, however, an exception to this rule known as the "routine booking" exception by which a waiver is not required if the question was asked as a matter of routine to obtain basic identifying data or biographical information for the booking or pretrial services process,[3] or for a jail administrative purpose.[4] In addition, there is a *Miranda* exception known as the "public safety" exception which applies if the answer to the question was necessary to protect a member of the public—or the prisoner himself—from harm.[5]

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[1] Pen. Code § 186.22(b)(1).

[2] *Rhode Island v. Innis* (1980) 446 U.S. 291, 301 ["the definition of interrogation can extend only to words or actions on the part of police officers that they *should have known* were reasonably likely to elicit an incriminating response"].

[3] See *Pennsylvania v. Muniz* (1990) 496 U.S. 582, 601; *Rhode Island v. Innis* (1980) 446 U.S. 291, 301; *People v. Farnam* (2002) 28 Cal.4th 107, 180.

[4] See *People v. Gomez* (2011) 192 Cal.App.4th 609, 634.

[5] See *People v. Stevenson* (1996) 51 Cal.4th 1234 ["[W]hen it is the arrestee's life which is in jeopardy, the police are equally justified in asking questions directed toward providing lifesaving medical treatment to the arrestee without first warning the arrestee that his answers can be used against him in a court of law. The *Miranda* advisement was meant to protect an accused from the loss of his right to silence, not from the loss of his life."]; *People v. Jones* (1979) 96 Cal.App.3d

At first glance, it would appear that asking a prisoner if he was a member of a street gang (and, if so, which one) would fall within both exceptions. The routine booking exception would seemingly apply because a suspect's street gang affiliation is as much a part of his biographical data as his occupation. (In fact, in many cases they are the same thing.) Second, such a question would seemingly fit within the public safety exception because deputies need to know the prisoner's affiliation to make sure he is not housed with rival gang members.

Nevertheless, in 2015 the California Supreme Court ruled in *People v. Elizalde* that the answers to booking questions about gang membership must be suppressed if the officer knew or should have known that the prisoner was being booked for a crime that carried a gang enhancement. And because Elizalde was charged with a crime that carried one, his answer to the question constituted "interrogation" and was therefore inadmissible because he had not waived his *Miranda* rights.[6]

The court in *Villa-Gomez* ruled, however, that *Elizalde* did not apply here because Villa-Gomez was being booked on an immigration hold, not for a crime for with a gang enhancement. Thus, his answers to routine gang questions were admissible to prove gang affiliation as to crimes he committed thereafter.[7] As the court observed, Villa-Gomez "was in custody on an immigration hold while United States Immigration and Customs Enforcement determined his immigration status. Nothing the *Elizalde* court wrote suggests its holding should apply to crimes that have not yet been committed at the time of the inquiry, and we decline to extend *Miranda* and [the definition of 'interrogation'] that far." Accordingly, the court ruled that the trial court was correct in its ruling that Villa-Gomez's response was admissible. POV

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820, 827-28 ["Do you want you're stomach pumped?"]; *U.S. v. Lackey* (10 2003) 334 F.3d 1224, 1227-28 ["It is irrelevant that the principal danger in this case was the risk of injury to the officers or Defendant himself, rather than ordinary members of the 'public'"].

[6] **NOTE**: When we reported on *Elizalde* we questioned whether it was correctly decided. We still do. That is because the sole purpose of the exclusionary rule is to deter police misconduct. As the Supreme Court explained, "To trigger the exclusionary rule, police conduct must be sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system." *Herring v. United States* (2009) 555 U.S. 135, 144. And yet, the court in *Elizalde* acknowledged that the deputy's act of asking the question about gang affiliation did not constitute misconduct. Said the court, "To be clear, it is permissible to ask arrestees questions about gang affiliation during the booking process." Thus, because there was no evidence that Elizalde's answers to the question were involuntary, it seems to us that there was no legal basis for suppressing them.

[7] Also see *U.S. v. Solano-Godines* (9th Cir. 1997) 120 F.3d 957.