

People v. Westmoreland

(2013) __ Cal.App.4th __ [2013 WL 428642]

Issue

Did an officer impliedly promise a murder suspect that he would receive a reduced sentence if he confessed, thus rendering his confession involuntary?

Facts

Paul Westmoreland and his girlfriend, Erica Gadberry, devised a plan whereby Gadberry would pick up a patron in a bar and take him to a nearby vacant apartment where Westmoreland would rob him. Gadberry ultimately enticed Francisco Sanchez into the apartment and Westmoreland fatally stabbed him during the robbery. Westmoreland and Gadberry then dumped the body down the stairs. Contra Costa County sheriff's deputies discovered the body the next day and, based on information from a bouncer at the bar, determined that Gadberry and Sanchez had left together. Detectives then obtained a warrant to search Gadberry's apartment. When they executed the warrant, they found Gadberry and Westmoreland together and arrested them.

At the sheriff's station, Gadberry confessed and implicated Westmoreland. Detectives then interviewed Westmoreland for about 45 minutes. Although he initially denied any involvement in the crime, he repeatedly expressed concern that he would spend the rest of his life in prison. The following are the pertinent parts (edited) of the interview:

Detective: Don't go hemming yourself up on a life case when it doesn't need to be.

Westmoreland: That's where I'm at.

Detective: Let me explain another thing, too.

Westmoreland: I'm not going to get life anyway?

Detective: No.

Detective: So at this juncture, at this point in your life where honesty is everything. You have a gentleman that went out to have a good time. He's a business owner with family. Something went bad. Maybe you just wanted to get something. Something went wrong and he's no longer with us. He's dead. We're homicide detectives, okay? So now we need to figure out how it went bad.

Westmoreland: Yeah, but check this out. I'm gonna get life for it?

Detective: No, that's not what I said.

Westmoreland: How you know I'm not gonna get life?

Detective: At this point in the investigation, we're going by what our evidence has and what [Gadberry] says . . . But if there's logical explanations for some of the actions that happened and there's a reason why, maybe the guy did something else and provoked something or who knows. That's why I'm here to let you set the record straight . . . You're in trouble, I'll be honest with you. But how much trouble you're in depends on you. . . . It depends on is this jury gonna see you as a young man that feels sorry that something went wrong and that's not what intended to happen, or is this jury gonna see a man that says, fuck it . . .

Detective: This is where your honesty is what will help you, okay?

Westmoreland: I'm gonna get life in prison.

Detective: You got to get past that, man.

Westmoreland: Shit don't matter man, I'm gonna get life.

Detective: That's not necessarily true, my friend.

Westmoreland then confessed. His motion to suppress his confession was denied, and he was convicted of murder and sentenced to life.

Discussion

Westmoreland contended that his conviction should be reversed because his confession was involuntary. The Court of Appeal agreed.

The U.S. Supreme Court has ruled that a 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.”¹ Similarly, the California Supreme Court observed that “[i]nvolutariness means the defendant’s free will was overborne.”² In applying these definitions of “involuntariness,” the courts have ruled that a statement is involuntary if officers threatened the suspect with a greater sentence if he refused to give a statement, or if they promised a reduced sentence if he gave one. As the California Supreme Court explained, “Promises and threats traditionally have been recognized as corrosive of voluntariness.”³

The question, then, was whether the detective who interviewed Westmoreland promised him that he would not receive a life sentence if he confessed. Although the transcript of the interview contained no direct threats or promises, the Court of Appeal concluded that a promise of a reduced sentence was implied. Said the court, “[The detective] repeatedly asserted appellant could avoid a life sentence if appellant provided an explanation for the murder that did not reflect premeditation ... [The detective] also repeatedly emphasized that the interrogation was the critical opportunity for appellant to help himself by being honest and showing remorse.” Finally, the court said that the detective repeatedly told Westmoreland that “whether he would be sentenced to life depended on appellant’s explanation of why he killed the victim.”

For these reasons, the court reversed Westmoreland’s conviction on grounds that his confession was involuntary and, therefore, should have been suppressed.

Comment

During this relatively short (42 minute) interview, we could find nothing that constituted an implied promise that Westmoreland would receive something less than a life sentence if he confessed. Not only were there no promises or threats, the detective told Westmoreland, “I’m not even gonna get into what you may or may not get. There’s all kinds of variables in that.” And later, “So it’s hard for me to tell you what you may or may not get.” Furthermore, when Westmoreland said at one point “I’m gonna get life,” the detective responded “[t]hat’s not *necessarily* true” (emphasis added), thus implying that a life sentence was, in fact, a possibility.

The court also ruled that Westmoreland’s confession was involuntary because the detective told him that “his admission to killing the victim during a robbery would not, by itself, trigger a life sentence. Due to the felony-murder rule, this was false.” It is, of course, true that Westmoreland would have been facing a life sentence if the detectives obtained sufficient admissible evidence that he had committed the murder during a robbery, and if the District Attorney later charged him under a felony-murder enhancement, and if the trial court found that the charges and enhancements were

¹ *Oregon v. Elstad* (1985) 470 U.S. 298, 304.

² *People v. Depriest* (2007) 42 Cal.4th 1, 34.

³ *People v. Neal* (2003) 31 Cal.4th 63, 84.

supported by the evidence, and if the jury ultimately agreed.⁴ But, none of these things were certain at this early stage of the investigation. More to the point, before Westmoreland confessed, the detective did not *know* that the murder had occurred during a robbery or that Westmoreland was even the murderer. After all, until then the only person who had furnished information about how the crime occurred was Gadberry, and she would hardly qualify as a reliable and trustworthy source whose testimony would ensure a felony-murder conviction her accomplice.

Furthermore, even if an officer makes a threat or promise regarding sentencing, a subsequent statement will not be suppressed unless it reasonably appeared the statement was made in response to the coercive influence; i.e., the coercion and statement must be “causally linked.”⁵ But throughout the interview, it was apparent that Westmoreland firmly believed he would receive a life sentence and, thus, even if the detective had promised him otherwise, it would not have been the motivating factor in his decision to confess.

The court also complained that the detective “repeatedly” told Westmoreland that he “could avoid a life sentence” if he “provided an explanation for the murder that did not reflect premeditation.” Even if the transcript supported this conclusion, such a statement is not objectionable. As the court observed in *People v. Andersen*, “Homicide does possess degrees of culpability, and when evidence of guilt is strong, confession and avoidance is a better defense tactic than denial.”⁶ For example, in *People v. Bradford* an officer told a murder suspect, “Well, it can go anywhere from, and this is just my opinion, I’m not telling you what’s going to happen, it can go anywhere from 2nd degree murder to 1st degree murder. . . . If there’s a trail of girls laying [sic] from here to Colorado, then it doesn’t look too good for you.” In ruling that this comment did not render the suspect’s subsequent statement involuntary, the California Supreme Court said, “[W]e believe defendant would reasonably understand these statements to mean that no promises or guarantees were being made.”⁷

Finally, the court faulted the detective for emphasizing “that the interrogation was the critical opportunity for appellant to help himself by being honest and showing remorse.” It is, however, settled that appeals such as “tell us what happened and help yourself,” “it’ll be in your best interests to tell the truth,” and “a cooperative attitude will be to your benefit,” will not render a confession involuntary if, as in this case, the officers did not promise anything specific. For example, in addressing such an argument in *Fare v. Michael C.* the U.S. Supreme Court observed, “The police did indeed indicate that a cooperative attitude would be to respondent’s benefit, but their remarks in this regard were far from threatening or coercive.”⁸ Similarly, the California Supreme Court said in *People v. Hill*, “Thus, advice or exhortation by a police officer to an accused to ‘tell the

⁴ See Pen. Code § 190.2(17)(A).

⁵ *People v. Guerra* (2006) 37 Cal.4th 1067, 1093. ALSO SEE *People v. Williams* (2010) 49 Cal.4th 405, 437 [“A confession is not involuntary unless the coercive police conduct and the defendant’s statement are causally related.”]; *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].”].

⁶ (1980) 101 Cal.App.3d 563, 583.

⁷ (1997) 14 Cal.4th 1005, 1044.

⁸ (1979) 442 U.S. 707, 727.

truth' or that 'it would be better to tell the truth' unaccompanied by either a threat or a promise, does not render a subsequent confession involuntary.”⁹

For these reasons, it appears that the court’s decision was contrary to both the facts and the law. POV

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⁹ (1967) 66 Cal.2d 536, 549. ALSO SEE *People v. Vance* (2010) 188 Cal.App.4th 1182, 1212 [Officer said “we are here to listen and then to help you out”]; *U.S. v. Preston* (9th Cir. 2013) __ F.3d __ [2013 WL 428642] [a statement is not involuntary merely because officers told the suspect that “confessing could minimize the consequences of his crime”].