

People v. Lee
(January 28, 2002) ___ Cal.App.4th ___

ISSUES

(1) Did officers coerce a statement from a witness to a murder? (2) If so, must the defendant prove the statement was unreliable in order to obtain a suppression order?

FACTS

Saxon and “Rabbit,” both members of a street gang, were shooting dice in an apartment courtyard when Rabbit was shot with a gun at point blank range in the back of the head. He was killed.

Later that day, Saxon was interviewed by a police polygraph examiner. Saxon denied that he shot Rabbit and initially claimed he didn’t know who did. The examiner then explained to Saxon that his polygraph machine—which he described as “state of the art” and as reliable as a calculator—had determined there was a 97% chance that he was lying.

Undaunted by the machine’s opinion of this story, Saxon held firm, saying he was innocent and that he didn’t see the killer. At this point, the examiner turned up the heat. According to the court, he threatened Saxon with a first degree murder charge unless he specifically identified Lee as the shooter. Lee, who was also a gang member, was known on the streets as “Midnight.” When Saxon refused to identify Lee, the examiner said some things to him that were of concern to the court. They included the following:

- I’m not going to tell you a lie. Sit here and tell you that you are not in trouble. That’s bullshit. First degree murder is a very serious situation. “Did you shoot Rabbit?” When you said “no” the computer said it’s not true.
- [Investigators] have other evidence and they have other witnesses that have finally come up and give information that was pointing directly at you.
- [T]here’s a lot more to this than what you and I talked about. Absolutely no question about it. And I can tell you now, I know Midnight is involved in it. Okay? And I’m not guessing, and you know it. So don’t blow it now.
- [S]o right now there’s no question in my mind either you are the one that pulled that trigger or Midnight and you pulled that trigger. Okay. What I am going to tell you now, before this thing gets too far out of hand, work with me or work against me.
- [Y]ou know who [shot Midnight]. And you know what happened out there and you are afraid because somebody is going to put a snitch jacket on you.

At that point, Saxon said, “Li’l Midnight shot him.”

At Lee’s trial, Saxon returned to his original story, testifying he did not see who shot Rabbit. As the result, the prosecution was permitted to play the tape of Saxon’s statement to the polygraph examiner.

Lee was convicted of first degree murder.

DISCUSSION

A statement is involuntary—and will be suppressed for all purposes—if it was motivated by an express or implied threat or promise.¹ Here, the court had no trouble determining that the examiner's statements did, in fact, constitute threats. Said the court, "[The examiner] in essence told Saxon: We will prosecute you for first degree murder unless you name Midnight as the killer." Furthermore, said the court, "the interrogation of Saxon was not designed to produce the truth as Saxon knew it but to produce evidence to support a version of events the police had already decided upon." Consequently the court concluded "the police crossed the line between legitimate interrogation and the use of threats to establish a predetermined set of facts."

There was, however, one additional issue. The People argued that even if the statement was coerced it should be admissible because Lee failed to prove it was unreliable. This argument was based on the rule that evidence obtained as the result of a coerced statement from someone other than the defendant will not be suppressed unless the defense can prove the evidence was unreliable.² As the court in *Lee* explained, "[W]hen the defendant seeks to exclude evidence which is at most the fruit of unlawful coercion, e.g., a murder weapon discovered as the result of unlawful coercion on a third party, the defendant must show some connection between the coercion and the evidence to be excluded which makes the evidence unreliable."

But this rule, said the court, applies only to evidence that was obtained as the result of the coerced statement—not the coerced statement itself. In the words of the court, "[W]hen the defendant seeks to exclude a third party's pretrial statement which was obtained through unlawful police coercion the defendant need only prove the unlawful coercion. If he does so, the evidence is deemed 'inherently unreliable.'"

Accordingly, the court ruled Saxon's statement was inadmissible.

¹ See *Colorado v. Connelly* (1986) 479 US 157 163, 163, 167; *In re Aven S.* (1991) 1 Cal.App.4th 69, 75-6 ["the ultimate question [is] whether the individual's free will was overborne."]; *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."]; *Oregon v. Elstad* (1985) 470 US 298, 304 [a statement is involuntary if it "had been 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 . . . "]; *People v. Andersen* (1980) 101 Cal.App.3d 563, 575 ["In sum, coercive questioning which overcomes the volition of the suspect by means of threats or false promises is proscribed."]; *People v. Vasila* (1995) 38 Cal.App.4th 865, 873 ["Where a person in authority makes an express or clearly implied promise of leniency or advantage for the accused which is a motivating cause of the decision to confess, the confession is involuntary and inadmissible as a matter of law."].

² See *People v. Badgett* (1995) 10 Cal.4th 330, 347; *People v. Jenkins* (2000) 22 Cal.4th 900, 966-7.