

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-000965-MR

JOSE SANTANA REBOLLAR

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE MARY C. NOBLE, JUDGE
ACTION NO. 02-CR-01230

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** **

BEFORE: EMBERTON, CHIEF JUDGE; DYCHE AND TACKETT, JUDGES.

TACKETT, JUDGE: Jose Santana Rebollar appeals from the judgment of the Fayette Circuit Court, entered on a conditional guilty plea to criminal possession of a forged instrument in the first degree. Appellant entered the plea after the court denied his motion to suppress a confession, which he claimed was not voluntary because he did not understand his right to remain silent. We affirm.

The Appellant, who is from Mexico, does not fully understand English and required the services of an interpreter in court. When he was arrested, Appellant was questioned in a

custodial interrogation by Detective Kenneth Patrick of the Lexington Police Department. Detective Patrick, who speaks Spanish, read Appellant his rights in English and in Spanish before questioning him. In the course of the interview, Appellant admitted to the possession of the forged papers. He was charged as above.

Appellant moved to suppress the statement, alleging that he did not knowingly and intelligently waive his right to remain silent because he did not properly understand it. At the hearing, Appellant admitted that he understood that he could ask for an attorney and that he did not have to answer the detective's questions, but did state that if he had refused "that would have been bad." Appellant did say at one point that he equated "remaining silent" with not speaking unless spoken to and being respectful, but he did also state that he understood that he had the right to refuse to answer questions. Based on those admissions, the court denied the motion. After the circuit court denied his motion to suppress, Appellant entered a conditional plea. This appeal followed.

Appellant argues on appeal that the court's ruling was in error, and that the court should have suppressed the statement. Our analysis begins with the standard for the admissibility of a statement obtained during a custodial investigation, found in Miranda v. Arizona, 384 U.S. 436, 86

S.Ct. 1602, 16 L.Ed.2d 694 (1966). For a statement to be admissible, the subject must make a knowing and voluntary waiver of his right to remain silent and his right to have counsel present. Generally, he must be informed of his rights and knowingly waive them in an environment free from coercion. While certain factors, such as the subject's mental capacity, weigh into the analysis, this standard is an objective standard and does not take into account the subject's idiosyncrasies. Rogers v. Commonwealth, Ky., 86 S.W.2d 29 (2002). In Rogers, a mentally retarded defendant challenged the admissibility of a statement he made while in police custody. The evidence showed that while the defendant had an I.Q. of only 65, the Kentucky Supreme Court held that the defendant's mental retardation alone, in the absence of police coercion, did not render his confession involuntary. Instead, the court concluded that there was no attempt by the police to take advantage of the defendant's condition, that the police took time to ensure that the defendant understood his rights, and that the police were unaware of the severity of his condition.

Here, we must take the language and cultural barrier into account. It is conceivable that a subject who does not speak English and is not from the United States would not understand his rights, particularly if that subject is from a culture in which the accused has significantly less legal

protection against police coercion. Here, however, the record shows that the police officer spoke the appellant's language and informed him of his rights. The record also shows that the appellant understood his rights and voluntarily waived them. Significantly, this case bears none of the hallmarks of coercion; the appellant's statement, though it was made in custody, was made voluntarily and without police coercion. While the language barrier is a factor to consider, we conclude that the defendant understood his rights and knowingly and voluntarily waived them when he talked to Detective Patrick.

For the foregoing reasons, the judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Gene Lewter
Fayette County Legal Aid
Lexington, Kentucky

BRIEF FOR APPELLEE:

Albert B. Chandler, III
Attorney General of Kentucky

John R. Tarter
Assistant Attorney General
Frankfort, Kentucky