

**IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA**

RICHARD JAMES CORDON, )  
 )  
 Appellant, )  
 v. )  
 THE STATE OF OKLAHOMA, )  
 )  
 Appellee. )

NOT FOR PUBLICATION  
Case No. F-2001-668  
STATE OF OKLAHOMA

NOV - 7 2002

MICHAEL S. RICHIE  
CLERK

**SUMMARY OPINION**

**CHAPEL, JUDGE:**

Richard Cordon was tried by jury and convicted of Second Degree Murder in violation of 21 O.S.Supp.1998, § 701.8(1) in Oklahoma County District Court, Case No. CF-00-2260. In accordance with the jury's recommendation, the Honorable Susan P. Caswell sentenced Cordon to fifteen (15) years' imprisonment. Cordon appeals from this conviction and sentence.

Cordon raises the following propositions of error:

- I. Appellant was denied a fair trial by denial of his requested jury instructions as to exculpatory statements, manslaughter in the second degree, voluntary intoxication and as to his theories of defense of excusable homicide and self-defense by use of non-deadly force.
- II. Appellant was denied the effective assistance of counsel for failing to object to hearsay and evidence of other crimes or request a limiting instruction.

After thorough consideration of the entire record before us on appeal, including the original record, transcripts, briefs, and exhibits of the parties, we find that Cordon's conviction must be reversed based upon the law and the

evidence. We find in Proposition I that the trial court erred in failing to give the jury Cordon's requested instruction on Exculpatory Statement of Defendant.<sup>1</sup>

**Decision**

The Judgment and Sentence is **REVERSED** and **REMANDED** for a new trial.

**ATTORNEYS AT TRIAL**

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**OPINION BY: CHAPEL, J.**

LUMPKIN, P.J.:	DISSENT
JOHNSON, V.P.J.:	CONCUR
STRUBHAR, J.:	CONCUR
LILE, J.:	DISSENT

**ATTORNEYS ON APPEAL**

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<sup>1</sup> OUJI-CR 2d 9-15. We find that Cordon's statement was exculpatory as it tends to establish his innocence and thus supported the requested instruction. The error was not harmless. Had the jury believed his statement, Cordon may have been acquitted. Additionally, we find that the trial court correctly denied Cordon's requested instructions on Second Degree Manslaughter, Excusable Homicide, Voluntary Intoxication and Self Defense through the Justifiable Use of Non-Deadly Force.

### **LUMPKIN, PRESIDING JUDGE: DISSENTS**

The trial court did not err in refusing to instruct the jury on exculpatory statements as Appellant's claims in his videotaped statement were refuted by the State's evidence. In *Rogers v. State*, 890 P.2d 959, 970-971 (Okla. Cr. 1995) this Court stated "[w]hen the State introduces an exculpatory statement which, if true, would entitle the defendant to acquittal, he must be acquitted unless the statement has been disproved or shown to be false by other direct or circumstantial evidence in the case." In the present case, Appellant essentially claimed the victim was acting as if he was going to be sick and appeared delirious. Appellant said he was trying to prevent the victim from taking more Xanax when the victim swung at him; they both fell to the ground and wrestled. Appellant claimed he held the victim until he stopped fighting him and then he returned to the car. The State presented witnesses who testified they saw Appellant chasing the victim and that the victim seemed to be running hard but was out of breath and tired. Appellant was seen to grab the victim by the back of the jacket. Subsequently, the victim was seen lying on the ground. Further evidence disproving Appellant's account of the events was presented by the pathologist who testified bruises on the victim's arms were consistent with someone grabbing him from behind.

Further, Appellant's claims of innocence were adequately dressed in jury instructions regarding the voluntariness of his statement to police and the general instruction that the defendant had plead not guilty to the charges on

trial. After considering the instructions in their entirety, a specific instruction on exculpatory statements was not warranted in this case. *See Kinsey v. State*, 798 P.2d 630, 633 (Okl.Cr.1990) (specific instruction that appellant denied having knowledge that the items were stolen or embezzled was not error as instructions as a whole fairly and accurately stated the applicable law).