

SEP 30 2004

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA
MICHAEL S. RICHIE
CLERK

JAMES DEAN MEADOWS,)
) NOT FOR PUBLICATION
Appellant,)
v.) Case No. F 2003-189
)
THE STATE OF OKLAHOMA,)
)
Appellee.)

OPINION

JOHNSON, PRESIDING JUDGE:

Appellant, James Dean Meadows, was tried by a jury in Oklahoma County District Court, Case No. CF 2001-2972, for First Degree Murder, in violation of 21 O.S.2001, § 701.7(A).¹ Jury trial was held on January February 10th – 18th, 2003, before the Honorable Jerry Bass, District Judge. The jury found Appellant guilty and set punishment at life imprisonment.² Appellant was formally sentenced in accordance with the jury's verdict on February 21, 2003. From the Judgment and Sentence imposed, Appellant filed this appeal.

Appellant raises five propositions of error in this appeal.³ Because we find the issue raised in Proposition Two requires Appellant's conviction for First

¹ Appellant was tried along with co-defendant Joe Dean Meadows. Co-defendant Juan Antonio Lopez was tried separately.

² The jury also found codefendant Joe Meadows guilty and set his punishment at life imprisonment.

³ Appellant raised the following propositions of error: the evidence was insufficient to prove the elements of First Degree Murder beyond a reasonable doubt; the trial court committed reversible error by refusing to suppress Appellant's videotaped statement to the police, which was obtained in violation of *Miranda v. Arizona*, was not voluntarily made, and further was the product of a patently illegal arrest; Appellant was denied his right of cross-examination, protected by the Sixth Amendment to the United States Constitution, by the admission of his codefendant's confession incriminating him; Appellant was denied the reasonably effective assistance of counsel guaranteed him by the Sixth Amendment; and, the accumulation of error

Degree Murder be reversed and remanded for a new trial, a brief recitation of facts relating to that proposition is necessary.

Around 3:00 a.m. on May 19, 2001, Jason Viscaino was shot by Juan Lopez. Lopez left the scene in a pickup truck driven by Appellant. Within hours, police investigation of the homicide led officers to Appellant's home.

Appellant's father Joe Meadows, charged and convicted as a co-defendant in this case, gave police officers permission to enter his house. After determining where Appellant was sleeping, the officers entered through the front door with guns drawn. They pushed their way through James' bedroom door, guns drawn, because a dresser was pushed up against it. They yelled at Appellant to get up and put his hands where they could see them; handcuffed him, and "stepped him back out of the house." Their weapons were pointed at Appellant. Appellant was removed from the house and placed in the backseat of a patrol car.

After officers searched the house for guns and determined the residence was secure, they allowed the co-defendant Joe Meadows to get some clothes for Appellant "to put on to take downtown." The officers brought Appellant back inside the house, removed the handcuffs, let him get dressed, and then took him downtown for an interview.

One officer testified he did not think they were making a formal arrest of Appellant at that time, but they were going to the station "strictly for an

in this case deprived Appellant of due process of law in violation of the Fourteenth Amendment to the United States Constitution and Article II, § 7 of the Oklahoma Constitution.

interview.” Another officer said, after the house was secure, he was told “they had a male subject ... in custody,” and placed him in the back seat of his car for transport to the homicide office for an interview. Although this officer did not arrest Appellant and did not believe Appellant had been formally arrested, he admitted Appellant could not get out of the back seat of his patrol car and would not have been allowed to leave if he asked. This officer said Appellant was in “investigative detention” when he was placed in the patrol car; he was not “free to leave” the patrol car and was not “free to leave” once he was at the police station. He said Appellant was not free to leave until the officers spoke with him.

At the police station, Appellant was placed in an homicide interrogation room. Homicide detectives Willie Edwards and John Maddox interviewed him. At the beginning of the interview, officer Edwards said “[t]he first thing I want you to know, James, you’re not under arrest. ... I mean, you’re down here on your own free will. ... your own free will voluntarily, you don’t have to talk to us....” Appellant responded, “Okay.” Then one of the officers asked Appellant if he was arrested and if anyone had “read your rights or anything like that,” and Appellant responded, “... came in my room and told me to get out of bed and keep my hands up.” The officer asked, “Well ...do you feel like you’re under arrest?” James responded “no, no, no.” Then one of the detectives said “well, the thing is we pretty well know what happened we just want to get your side of it and that’s why we want to talk to you without Mirandizing you so that you can go back home, okay?”

Appellant initially told the officers "some dudes came by" his house in a Monte Carlo "talking shit." Later that night when he was taking his girlfriend home, the car pulled up beside them and started talking shit again." Appellant said he "hailed ass back to the house and let my dad take them home." Appellant said he went to bed and denied Juan Lopez was even at his house. After a few more questions, one of the officers told Appellant they were hearing different stories and they knew Juan was at his house. Detective Maddox then said:

Well James let me tell you. When we brought you in here, like I said, you wasn't under arrest. I am in a position to arrest you and send you to the county jail right now if you won't tell us the truth. I want you to tell us the truth. ...it's the difference between you staying and going home or going to jail because the people described you to a tee who saw the truck out there at the shooting. So, you know, why don't you make that decision, whether you want to tell us the truth or not or if you want to go to the county jail because that's where we sit. I can either arrest you and you can shut up, or I can arrest you and you can talk or you can talk and go home. That's kind of where we're at, okay? ...

Appellant then said he "didn't shoot nobody." Officer Maddox responded,

Okay, fi (sic) you didn't shoot nobody, that's great. Then you've got an option here to tell us the truth and go home. But if you can't tell us a better story than that, you can't tell us straight, I'll have to arrest you.

Appellant said "As far as I know Juan didn't shoot...I know he shot a gun but didn't notice at anybody."

Officer Maddox then responded, "No, no. You ... are going to tell the whole truth and you're going to go home or I'm going to have to put you in jail. Sorry."

When Appellant still did not answer the way the detectives wanted, officer Maddox said, "I mean, I don't want to put you in jail. That's why I give you the opportunity to tell the truth. This is a second opportunity. There is not a third."

At that point, Appellant admitted his involvement in the shooting of Jason Viscaino.

In Proposition Two, Appellant complains the trial court committed reversible error when it refused to suppress Appellant's videotaped statement to the police and we agree. The facts show Appellant was forcibly seized and taken from his home in the early morning hours. He was not told he was under arrest and he was not mirandized.⁴ He was significantly deprived of his freedom of action and the record does not show he voluntarily accompanied officers to the police station. The facts demonstrate Appellant was not free to leave and we find he was arrested within the meaning of the Fourth Amendment. *Kaupp v. Texas*, 538 U.S. 626, 123 S.Ct. 1843, 1847, 155 L.Ed.2d 814 (2003). We find no compelling intervening circumstances purged the taint of this illegal seizure and the trial court erred when it concluded his confession was voluntary and admissible. *Id.*; see also *Brown v. Illinois*, 422 U.S. 590, 603-604, 95 S.Ct. 2254, 2261-2262, 45 L.Ed.2d 416 (1975).

Although trial counsel challenged the admission of this evidence on other grounds, admission of his confession constitutes plain error and we find it was

⁴ In accordance with *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), a defendant's statement obtained during a custodial interrogation is not admissible unless the defendant is advised of certain rights.

not harmless beyond a reasonable doubt. *Chapman v. California*, 386 U.S. 18, 24, 87 S.Ct. 824, 828, 17 L.Ed.2d 705, 710-711 (1967). Accordingly, we find this case must be reversed and remanded for a new trial.

Because we grant relief on Proposition Two, the remaining propositions of error are rendered moot and need not be addressed.

DECISION

The Judgment and Sentence imposed in Oklahoma County District Court, Case No. CF 2001-2972, is hereby **REVERSED AND REMANDED FOR A NEW TRIAL**

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OPINION BY: JOHNSON, P.J.
LILE, V.P.J. : DISSENTS
LUMPKIN, J.: CONCURS IN RESULTS
CHAPEL, J.: CONCURS
STRUBHAR, J.: CONCURS

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LILE, VICE PRESIDING JUDGE: DISSENTS

The issue of voluntariness of Appellant's statement was exhaustively considered by the trial court. Prior to making the statement involved here, the Appellant was advised that he wasn't under arrest and he acknowledged he knew he was not under arrest. Appellant stated that he had been arrested before and knew the difference. Appellant in fact left the police station after his confession of involvement in the murder. The trial court's determination should be sustained. *Nuckols v. State*, 1984 OK CR 92, 690 P.2d 463. I am authorized to state that Judge Lumpkin joins in this dissent.

I would affirm.