

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

AUG 22 2000

JAMES W. PATTERSON
CLERK

IN THE COURT OF CRIMINAL APPEALS FOR THE STATE OF OKLAHOMA

RICARDO ORTIZ,)

Appellant,)

-vs-

STATE OF OKLAHOMA,)

Appellee.)

NOT FOR PUBLICATION

No. F-99-587

S U M M A R Y O P I N I O N

STRUBHAR, PRESIDING JUDGE:

Appellant, Ricardo Ortiz, was convicted of First Degree Rape (Counts I, II and III) and Indecent Proposal to a Child (Count IV) in the District Court of Cleveland County, Case No. CF-98-1618. He was tried by a jury before the Honorable Alan J. Couch. The jury assessed punishment at thirty years imprisonment on each of Counts I and II, thirty years and one day imprisonment on Count III and twenty years imprisonment on Count IV. The trial court sentenced Appellant accordingly, and ordered the sentences to run consecutively.

After thorough consideration of the entire record before us on appeal, including the original record, transcripts, and briefs of the parties, we reverse and remand the case for a new trial. In reaching our decision, we considered the following propositions of error and determined this result to be required under the law and the evidence:

- I. There was fatal error in the failure to suppress statements allegedly made to detectives.

DECISION

Appellant argues on appeal that his Sixth Amendment right to counsel was violated and accordingly, his statement should have been suppressed. The record reveals that the Information was filed against Appellant on September 2, 1998. Appellant was arrested on September 10, 1998. The district court appointed counsel for Appellant on September 11, 1998. Police Detectives Bo Mathews and Steven Pollack conducted a custodial interrogation of Appellant on September 14, 1998, before Appellant had spoken with the attorney appointed to represent him. His attorney filed an entry of appearance on September 15, 1998. We find from this, that at the time of the interrogation, Appellant's Sixth Amendment right to counsel had attached and was not waived. *See Valdez v. State*, 900 P.2d 363, 374 (Okl.Cr.1995)(Sixth Amendment right to counsel attaches when the Information is filed and a valid waiver of that right cannot be established by showing only that the accused responded to police-initiated custodial interrogation even if the accused was advised of his rights). *See also Pickens v. State*, 850 P.2d 328 (Okl.Cr.1993); *Walker v. State*, 795 P.2d 1064 (Okl.Cr.1990). Accordingly, Appellant's confession was taken in violation of his Sixth Amendment right to counsel and should not have been admitted at trial.

Because this error was of constitutional magnitude, this Court must apply the test set forth in *Chapman v. California*, 386 U.S. 18, 24, 87 S.Ct. 824, 828, 17 L.Ed.2d 705, 710-11 (1967) to determine whether this error was harmless beyond a reasonable doubt. In light of the damaging nature of Appellant's confession, we cannot find that this error was harmless beyond a reasonable doubt. Accordingly, Appellant's Judgment and Sentence is **REVERSED** and **REMANDED** for a **NEW TRIAL**.

APPEARANCES AT TRIAL

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OPINION BY: STRUBHAR, P.J.
LUMPKIN, V.P.J.: CONCUR
JOHNSON, J.: CONCUR
CHAPEL, J.: CONCUR
LILE, J.: CONCUR

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