



IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

BILLY VIVIAN,
Appellant,
v.
THE STATE OF OKLAHOMA,
Appellee.

NOT FOR PUBLICATION

Case No. F 98-385

SUMMARY OPINION

LILE, JUDGE:

Appellant Billy Vivian was convicted of two counts of First Degree Murder, 21 O.S.1991, § 701.7, after a jury trial in the District Court of Oklahoma County, Case Number CF-96-495, before the Honorable Charles Owens, District Judge. In accordance with the jury verdict, Judge Owens sentenced Vivian to life on both counts. From this judgment and sentence Vivian has perfected his appeal.

Vivian raises the following propositions of error in support of his appeal:

- 1. The trial court abused its discretion in denying severance and requiring Appellant's statement to Detective Weaver to be redacted to exclude portions exculpatory to Appellant but inculpatory to codefendant Williams.
2. The trial court erred in admitting co-defendant Wayne Williams' statements implicating Billy Vivian in the homicides under the coconspirator exception to the prohibition against such hearsay evidence.
3. The admission of codefendant Williams' confession implicating Appellant in the homicides violated the prohibitions of Bruton v. United States.

4. The evidence was insufficient to support Appellant's conviction for First Degree Malice Aforethought Murder.

After thorough consideration of these propositions and the entire record before us on appeal, including the original record, transcripts, and briefs, we have determined that the judgment and sentence shall be reversed and remanded for a new trial. We find merit to Vivian's first proposition of error which resulted from the trial court's refusal to grant severance. Because this first proposition requires reversal, we will not comment on the merit of the other propositions of error.

In proposition one Vivian claims that the introduction of an abbreviated conversation between him and detectives constituted reversible error. Vivian was tried together with codefendant Williams for these crimes. The trial court excluded portions of Vivian's statement to police wherein Vivian agreed that it was difficult to talk about "because he was going to have to tell about his brother's involvement." At trial the statement was that Vivian agreed that "it was going to be hard for him to do, to tell about this." Portions of the conversation were redacted in order to protect the rights of Williams.

In light of the trial court's ruling, Vivian requested that his trial be severed from that of Williams stating that Vivian would "be highly prejudiced by the way you redacted that statement." The request was overruled. This redaction changed the whole complexion of the conversation. The trial court had to redact portions of the whole statement in order to protect the rights of Williams;

however, the redaction prejudiced Vivian; therefore, severance should have been granted. *See Spunaugle v. State*, 1997 OK CR 47, 946 P.2d 246, 251. The entire statement was relevant to decide the nature of the whole conversation between Vivian and the detectives, therefore, the entire conversation should have been admitted in Vivian's trial. *Williams v. State*, 1996 OK CR 16, 915 P.2d 371, 381. The failure to grant a severance in this case created error which prejudiced Vivian and requires a new trial.

Accordingly, Vivian's judgment and sentence is **REVERSED** and **REMANDED** for a **NEW TRIAL**.

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OPINION BY: LILE, J.

STRUBHAR, P.J.: CONCURS
LUMPKIN, V.P.J.: CONCURS IN RESULTS
JOHNSON, J.: CONCURS
CHAPEL, J.: CONCURS IN RESULTS