Affirmed and Opinion filed February 24, 2000.

In The

Fourteenth Court of Appeals

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NO. 14-98-00507-CR

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TRINIDAD DIAZ, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 209th District Court
Harris County, Texas
Trial Court Cause No. 746,149

O P I N I O N

A jury convicted Trinidad Diaz of murder in the beating death of Jose Sauceda and assessed his punishment at thirty years' confinement. In his sole point of error appellant complains about the admission of his videotaped custodial statement. We affirm.

Diaz contends his statement was the product of an illegal detention and so should have been suppressed. The state contends his videotaped statement was the result of a lawful arrest under TEX. CODE CRIM. PROC. ANN. art. 14.04 (Vernon 1977), and that in any case, if appellant had been illegally arrested, his appearance before a magistrate prior to making his statement had the effect of attenuating the taint.

We find that Diaz was indeed illegally detained; however, because of significant intervening circumstances, including passage of time and an appearance before a neutral magistrate, we find the taint of the illegal detention was sufficiently dissipated to permit admission of the statement.

At the motion to suppress hearing Officer Leroy Benavidez of the Houston Police Department testified as to his handling of appellant. Benavidez said he first went to interview appellant and his wife, Martha Diaz, at their home because Mrs. Diaz was Saucedo's ex-wife. Benavidez asked them to come to the police station to give written statements, and sent a police car to their address to pick them up, when it became apparent that their first version of events was inaccurate.

At the police station Mrs. Diaz gave a video statement in which she said her ex-husband came over with another man, that they had been drinking beer on the porch of their trailer, and that when they ran out of beer Diaz and the complainant left to get more. She said Diaz came back several hours later alone and told her that he had gotten into a fight with complainant and dropped him off elsewhere. She also told Benavidez that appellant told her he had to clean up the van because it had gotten "messed up" in the fight.

Benavidez said he had observed fresh injuries on appellant's knuckles, consistent with a fistfight. He also said Mrs. Diaz's statement corroborated the statement of another witness and contradicted appellant's earlier statement. However, appellant's story did not change from the first time they spoke. At that point, Benavidez said he decided to put an "administrative hold" on appellant until he could find the van which appellant and Saucedo took to buy beer. Benavidez also said he did not speak to appellant until the next day.

Benavidez acknowledged that when he put that "administrative hold" on appellant he was no longer free to leave. He said he thought the detention was justified to prevent appellant from learning from his wife what she told police, and to keep him from learning that they were looking for the van. He said he thought appellant was a flight risk. Benavidez said he thought

he had sufficient probable cause to put the administrative hold on appellant, but that he wanted to be sure he had enough evidence to arrest.

Benavidez said officers located the van late in the afternoon and that the required testing could not be done until the next morning. When those tests turned up blood in the van, Benavidez said appellant was brought before a magistrate so they could take another statement. That statement was videotaped and was played for the jury. Charges were then filed and a warrant issued for appellant's arrest.

As a general rule, police officers must always obtain an arrest warrant before taking someone into custody. *Hogan v. State*, 631 S.W.2d 159 (Tex. Crim. App. 1982). The state conceded in the trial court and in this court that appellant was under arrest when he was placed on "administrative hold." We must therefore determine whether appellant's detention fits into one of the exceptions to the statutory requirement that arrest requires a warrant.

The state argues appellant was legally arrested under TEX. CODE CRIM. PROC. ANN. art. 14.04 (Vernon 1977):

> Where it is shown by satisfactory proof to a peace officer, upon the representation of a credible person, that a felony has been committed, and that the offender is about to escape, so that there is not time to procure a warrant, such peace officer may, without a warrant, pursue and arrest the accused.

In order for an arrest to be justified under article 14.04, the state must show that a felony has been committed; that the person arrested was the offender; and that the offender was about to escape. *Dejarnette v. State*, 732 S.W.2d 346, 349 (Tex. Crim. App. 1987). This exception is strictly construed. *Id.* The element at issue here is whether Benavidez had satisfactory proof that appellant was about to escape. "It is the information that escape is imminent which dispenses with the necessity of a warrant of arrest." *Rutherford v. State*, 104 Tex. Crim. R. 127, 283 S.W. 512, 515 (1926). Furthermore, when the proof of imminent escape consists solely of observations by law enforcement personnel, those observations must include evidence of some act by the suspect tending to show an intent to escape. *Dowthitt v. State*, 931 S.W.2d 244, 259 (Tex. Crim. App. 1996).

The state concedes there was no act on appellant's part showing an intent to escape. However, they argue this case fits within the narrow exception of *West v. State*, 720 S.W.2d 511 (Tex. Crim. App. 1986)(plurality op.).

In *West*, residents on the balcony of an apartment complex heard a sound like the repeated slamming of a door, then saw a man whose clothes were wet with blood leaving one apartment. Entering the same unit, they found the lifeless body of the victim. *Id*. at 512. The police were summoned, and another resident volunteered that the described perpetrator was staying in another apartment in the complex. *Id*. at 512-513. Police went to that apartment and knocked on the door. The door was answered by West's companion; West was visible in the background, wearing only a pair of shorts. *Id*. at 513. West was arrested and identified by the witnesses. The court upheld his arrest as fitting within the exception of article 14.04: "having come lawfully upon the person whom they had probable cause to believe to have committed an offense of which they had first hand knowledge, under circumstances that gave rise to the conclusion that the suspect would flee if permitted to do so, they arrested that suspect." *Id*. at 518. The court concluded:

> Where officers who reasonably believe that further investigation of an offense may be necessary in order to justify the issuance of a warrant, and where those officers undertake that investigation lawfully and without impinging upon reasonable expectations of privacy, and where that investigation leads to the receipt of information which in combination with their other information constitutes probable cause to arrest the suspect, but that information is obtained in the presence of the suspect under circumstances which would lead the officers reasonably to believe that the suspect would take flight if given the opportunity to do so, the officers are authorized to arrest.

West, 720 S.W.2d at 518.

We believe *West* is inapplicable here because probable cause was not developed in the presence of the suspect. Benavidez said he thought Diaz might flee because he would hear from his wife what she had told him, and would hear that police were looking for the van to test it. We cannot say the inference that this would cause Diaz to flee was so reasonable that the requirements of article 14.04 were constructively met. To hold otherwise would render the statute's warrant requirement meaningless. Under these circumstances, the officers should

have gone before a neutral magistrate and obtained a warrant for appellant's arrest before keeping him overnight. We therefore find appellant's "administrative detention" was in effect an illegal arrest.

Moreover, exceptions to the warrant requirement are narrowly construed. We believe the *West* warrantless arrest exception should be left to so-called "hot pursuit" cases, in which officers in the field confront a suspect at liberty. *See, e.g., Laca v. State*, 895 S.W.2d 171, 178-179 (Tex. App.–El Paso 1995). We will not expand *West* to cover the situation of fruitless stationhouse interrogation.

Our analysis does not end there, however. Given that appellant's videotaped statement was in the chronological chain of an original illegal arrest, we must now determine whether it so tainted the ensuing statement that it must be suppressed. *See generally Wong Sun v. United States*, 371 U.S. 471 (1963). In determining whether the videotaped statement should have been excluded, we are guided by the four-factor test announced in *Brown v. Illinois*, 422 U.S. 590 (1975). Those factors include whether *Miranda*[1] warnings were given; the temporal proximity of the arrest and the confession; the presence of intervening circumstances; and the flagrancy of the official misconduct. *Brown*, 422 U.S. at 602-604; *Bell v. State*, 824 S.W.2d 780, 787 (Tex. Crim. App. 1994); *Johnson v. State*, 871 S.W.2d 744 (Tex. Crim. App. 1994).

First, testimony indicates that appellant was given *Miranda* warnings at least twice before his videotaped statement. Second, almost a full day elapsed between appellant's being taken into custody and his statement, suggesting that the shock of custody had dissipated. These two factors, however, are not the most determinative ones in our evaluation of the admissibility of appellant's statement. The next two factors are of greater significance.

We find that the police conduct in this case was not flagrant. Officer Benavidez testified he was trying to avoid arresting appellant without sufficient probable cause. While

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[1] *See Miranda v. Arizona*, 384 U.S. 436 (1966).

the officer's explanation was disingenuous in justifying his actions, there is no allegation or evidence that the police took special advantage of appellant during this time, or that they even talked to appellant between the time he was taken before a magistrate. In other words, officers did not use the confinement to batter appellant with constant interrogation or to badger him for consent to search the van; they did not seek to turn his confinement to their advantage. This preponderates strongly in favor of attenuation of the taint on his later statement, which was obtained after he appeared before a magistrate and received a full statement of his legal rights, which he must have acknowledged he understood.

In sum, we find that appellant's appearance before a neutral magistrate prior to giving his statement was a significant break in the chain of events from his "arrest" to his statement. This is also a powerful factor in favor of admissibility of his statement.

After considering the totality of the circumstances, we cannot say that the trial court abused its discretion refusing to suppress appellant's videotaped statement. We therefore overrule appellant's points of error and affirm the judgment of the trial court.

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Joe L. Draughn
Justice

Judgment rendered and Opinion filed February 24, 2000.
Panel consists of Justices Cannon, Draughn, and Lee.*
Do Not Publish — TEX. R. APP. P. 47.3(b).

* Senior Justices Joe L. Draughn, Bill Cannon, and Norman Lee sitting by assignment.