

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STATE OF MISSOURI,

v.

CHARLES MICHAEL O'NEAL,

Respondent,

Appellant.

DOCKET NUMBER WD74687

Date: March 12, 2013

Appeal from:
Randolph County Circuit Court
The Honorable Russell E. Steele, Judge

Appellate Judges:
Division One: Mark D. Pfeiffer, P.J., Victor C. Howard and Alok Ahuja, JJ.

Attorneys:
Jessica P. Meredith, Jefferson City, MO, for appellant.
Margaret M. Johnston, Columbia, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS -- WESTERN DISTRICT

STATE OF MISSOURI

v.

CHARLES MICHAEL O'NEAL,

Respondent,

Appellant.

WD74687

Randolph County

Following a bench trial, Appellant Charles O'Neal was found guilty in the Circuit Court of Randolph County of first-degree murder, first-degree assault, and two counts of armed criminal action. The charges arose out of the shooting death of Dawn Kelly in Howard County on February 10, 2007.

Prior to his trial, O'Neal moved to suppress statements he had made to the police in a third interrogation session. O'Neal claimed that his statements were inadmissible because the police had unlawfully continued to question him after he had invoked his right to remain silent. The trial court denied O'Neal's motion to suppress following an evidentiary hearing. O'Neal appeals.

AFFIRMED.

Division One holds:

The State argues that O'Neal is entitled to only plain-error review of his appellate arguments, because he stated that he had "no objection" when the recordings and transcripts of his third interrogation were offered in evidence at trial. We disagree. The record reflects that both the trial court and the prosecuting attorney understood that O'Neal intended to preserve his objections to the admission of statements made during his third interrogation. When O'Neal stated "no objection," he intended only to express his agreement to the admission into the trial record of the testimony and exhibits from the suppression hearing, to expedite this bench trial.

O'Neal argues that he invoked his right to remain silent both at the conclusion of the second interrogation session, and at the commencement of the third. While it may be that O'Neal invoked his right to remain silent at the end of the second interrogation, O'Neal's invocation of his right to remain silent at the end of the second interrogation did not forever prohibit police from attempting to resume questioning. O'Neal's invocation of his right to remain silent was scrupulously honored in this case, because: the interrogation immediately

ceased; police waited almost five hours before resuming questioning; police re-*Mirandized* O'Neal at the commencement of the third interrogation; and there is no evidence that the short third interrogation session was intended to wear down O'Neal's resistance or make him change his mind.

At the outset of the third interrogation, O'Neal stated his willingness to participate in a conversation "to clear up" inconsistencies between his account and the statements of other witnesses. He then said that "I still don't feel like talking"; later still, he said that he would tell his version of events, but only if the tape recorder was turned off (a request with which police complied). In these circumstances, O'Neal's statement that "I still don't feel like talking" is, at best, an ambiguous invocation of his right to counsel. Given the ambiguity, police were not required to cease questioning, or ask O'Neal to clarify his intent.

Even if the admission of O'Neal's statements in the third interrogation was erroneous, any error was harmless beyond a reasonable doubt and could not support reversal, in light of the overwhelming other evidence of O'Neal's guilt, including his statements during the (unchallenged) first and second interrogations.

Before: Division One: Mark D. Pfeiffer, P.J., Victor C. Howard and Alok Ahuja, JJ.

Opinion by: Alok Ahuja, Judge

March 12, 2013

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