

MISSOURI COURT OF APPEALS – WESTERN DISTRICT
SPECIAL DIVISION (PFEIFFER, P.J., WITT, J. AND FISCHER, SP. J.)
JUNE 15, 2015
MISSOURI BOYS STATE
UNIVERSITY OF CENTRAL MISSOURI

WD 76129

State of Missouri, Respondent

vs.

Isaac Perdomo-Paz, Appellant

Appellant was charged with three counts of first degree murder and three counts of armed criminal action. The State alleged Appellant, after deliberation, shot and killed Dejan Joksimovic, Armin Hamidovic, and Delfino Elizondo. During the evening of February 25, 2011, several groups of friends from various parts of Kansas City attended a party in Independence, Missouri. Armin Hamidovic (victim) drove a group to the party including: Adnan Islamovic (Armin's cousin), Dejan Joksimovic (victim), Carlos Herrera, Timothy Snell, Diana Madera, Georgette Mendez and Karla Trejo. Appellant drove Itzel Amaro and Pedro Rodriguez to the party. Irvin Elizondo, Omar Morales and Delfino Elizondo (victim and Irvin's cousin) also went to the party together. Carlos Campos and his brother Jose drove to the party as well. While at the party, people drank and smoked marijuana. Appellant and Karla Trejo had dated for several months prior to the party. That evening they danced and kissed. After the police broke up the party, the groups reconvened at Quick Trip to make new plans. The group in Armin's car decided to rent a room at a Red Roof Inn. Georgette invited people from the other groups to the hotel. They continued to drink and smoke marijuana.

In the hotel room, witnesses observed Karla and Armin flirting with each other. During the course of the evening, people left the room to get more marijuana and others went out on the balcony. When Appellant started to leave the hotel room he grabbed Karla's arm and told her she was coming with him. When she refused, they argued and he slapped her. Armin confronted Appellant, and Appellant shot him in the forehead and cheek. Appellant then shot Delfino in the head and shot Dejan twice (in the neck and in the back of the head). Ultimately, Appellant was arrested and charged with the murders. After a jury trial, Appellant was found guilty of two counts of first degree murder regarding the deaths of Dejan and Armin. He was found guilty of second degree murder regarding the death of Delfino. He was also found guilty of three counts of armed criminal action. Appellant was sentenced to life without parole for the murders of Dejan and Armin, fifty years' imprisonment for each count of armed criminal action, and life imprisonment for the murder of Delfino, all counts running consecutively.

Appellant argues on appeal:

- (1) The trial court erred in overruling Isaac's motion to suppress his March 3, 2011 statement and in admitting the statement at trial, in violation of Isaac's rights to due process and to be free from self-incrimination, because the statement was inadmissible, in that Isaac unequivocally asserted his right to remain silent when he told Detective Ray and Detective Allen that he did not want to speak and Detective Ray's response – "Why not?" – showed that the detectives understood that Isaac did not want to speak, yet they ignored his assertion and continued to question him.
- (2) The trial court erred in overruling Isaac's motion to suppress his March 3, 2011 statement and in admitting the statement at trial, in violation of Isaac's rights to due process and to be free from self-incrimination, because the totality of the circumstances shows that Isaac did not voluntarily waive his right to remain silent, in that, from the start, Isaac did not want to speak about the homicides; he told the detectives he did not want to speak, yet they continued to ask him questions; the detectives ignored Isaac's request for water and a bathroom break; Detective Ray was aggressive and demeaning; and Isaac's statements and demeanor showed that he was completely exhausted.
- (3) The trial court erred and abused its discretion in overruling Isaac's "Motion to Suppress Defendant's Stop and Arrest," in allowing testimony and evidence about the March 2, 2011 detention and arrest, and in allowing testimony and evidence that was the fruit of that detention and arrest, i.e., the statement Isaac gave to Detectives Ray and Allen on March 3, 2011, and thereby violated Isaac's rights to due process, freedom from unreasonable seizure, and freedom from compelled self-incrimination, because the police officers illegally detained and arrested Isaac, in that the March 2nd detention was not a consensual encounter; from the start, Isaac was not free to leave despite the fact that the officers lacked reasonable suspicion based on specific and articulable facts that Isaac was involved in criminal activity; even if the stop initially had been valid, it exceeded its proper scope; and the police never had probable cause to arrest Isaac, as shown by (1) the officers' "brainstorming" session when they tried to figure out what to charge Isaac with, and (2) the fact that the evidence did not support the ordinance violation the officers used as a pretext for his arrest.
- (4) The trial court erred in overruling Isaac's motion for judgment of acquittal at the close of all evidence regarding Counts I and III, accepting the verdicts on those counts, entering judgment for first-degree murder, and

sentencing Isaac to life without parole, and thereby violated his rights to due process and a fair trial, because the State failed to prove an element of first-degree murder, that Isaac coolly reflected before shooting Dejan and Armin, in that the evidence showed that Isaac was not in a cool frame of mind but instead was embroiled in a confrontation with Armin about how Isaac had treated Karla, and the shootings occurred before Isaac had time to cool off.

- (5) The trial court erred in overruling Isaac's motion for parolable sentences on Counts I and III and in sentencing him to life without parole on those counts, thereby violating his right to freedom from cruel and unusual punishment, because the mandatory sentences of life without parole required by Section 565.020, RSMo, violated the Eighth Amendment's mandate that punishment for crime be proportioned to both the crime and the offender, in that Isaac was only eighteen years old when the crimes occurred and the hallmark features of being a teenager (immaturity, impetuosity, and failure to appreciate risks and consequences) apply just as well to 18-year-olds as they do for 17-year-olds, such that, without individualized sentencing, far too great a risk exists that Isaac's sentences are disproportionate.