

**MISSOURI COURT OF APPEALS EASTERN DISTRICT
OPINION SUMMARY**

STATE OF MISSOURI,)	No. ED102752
)	
Respondent,)	Appeal from the Circuit Court
)	of Cape Girardeau County
vs.)	
)	Honorable Benjamin F. Lewis
KENNETH BELL,)	
)	
Appellant.)	FILED: May 3, 2016

Appellant Kenneth Bell (“Bell”) appeals from the judgment of the trial court entered after a jury convicted him on two counts of first-degree murder and one count of armed criminal action. On appeal, Bell argues that the trial court clearly erred in denying a pretrial motion to suppress Bell’s confession. Bell contends that the detectives violated Edwards v. Arizona by interrogating him after he told the detectives he was invoking his right to have legal counsel present before speaking to them. Bell also argues that the trial court erred in allowing the State to introduce evidence that he possessed cocaine when Bell was arrested.

REVERSED AND REMANDED WITH DIRECTIONS UNDER RULE 30.20.

DIVISION FOUR HOLDS: The evidence of Bell’s possession of cocaine was inadmissible because it constituted uncharged bad acts. However, because there is no reasonable probability that the jury would have reached a different conclusion but for the improper evidence, Bell suffered no outcome-determinative prejudice from admitting evidence of his cocaine possession.

Because the detectives engaged in the functional equivalent of express questioning under Rhode Island v. Innis before Bell initiated any conversation with the detectives, the detectives improperly subjected Bell to interrogation after he invoked his right to counsel. Accordingly, the trial court should have suppressed Bell’s confession.

Because we cannot conclude that the admission of Bell’s confession was harmless beyond a reasonable doubt as to his conviction for murder in the first degree, the trial court’s judgment is reversed and remanded. However, because the admission of Bell’s confession was harmless error as to the charges of murder in the second degree, this matter is remanded, and in accordance with Rule 30.22, the trial court is directed to allow the State to elect within sixty days from the issuance of the mandate, to either retry Bell on all issues within the charges of murder in the first degree and armed criminal action, or to accept the lesser convictions of murder in the second degree and armed criminal action.

Opinion by: Kurt S. Odenwald, Judge Sherri B. Sullivan, P.J., and Lisa P. Page, J., concur.

Attorney for Appellant: Craig A. Johnston
Attorney for Respondent: Chris Koster and Nathan J. Aquino

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