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2014 IL App (5th) 120109-U

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

NO. 5-12-0109

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Williamson County.
)	
v.)	No. 10-CF-460
)	
TRAVIUS K. TUCKER,)	Honorable
)	John Speroni,
Defendant-Appellant.)	Judge, presiding.

JUSTICE CATES delivered the judgment of the court.
Presiding Justice Welch and Justice Goldenhersh concurred in the judgment.

ORDER

- ¶ 1 *Held:* Where the admission of the defendant's unlawfully obtained confession was reversible error, the judgment of the circuit court is reversed and the case is remanded for a new trial.
- ¶ 2 The defendant, Travius K. Tucker, was convicted of felony murder predicated on attempted armed robbery and was sentenced to 55 years' imprisonment. He appeals his conviction. For the reasons that follow, we reverse the judgment of the circuit court and remand for a new trial.
- ¶ 3 As an initial matter, the State moved to strike section III of the defendant's supplemental appellate brief. We took the motion to strike with the case. Upon

consideration, we hereby deny the State's motion.

¶ 4

BACKGROUND

¶ 5 The defendant was arrested and interviewed regarding the shooting death of the victim, Jamel Davis. At the time of his arrest, the defendant was interviewed by two detectives, Brian Thomas from the Williamson County sheriff's office, and Bruce Graul from the Herrin police department. A video of the interview was taken, and the video was transcribed for trial. During the interview, the following colloquy ensued:

"DETECTIVE THOMAS: Travius, let's go back to—let's go with a simple question. Were you in Herrin at three o'clock this morning? Let's just start there. No more, no less. Were you in Herrin at three o'clock this morning?

TUCKER: I don't know. I want a lawyer.

DETECTIVE THOMAS: Okay.

DETECTIVE GRAUL: Do you want to stop the interview?

TUCKER: No, we can talk. I ain't did nothing though.

DETECTIVE THOMAS: Okay. You are going to have to tell us whether you want to talk to us or you want an attorney, because you already said you want an attorney. Right?

TUCKER: Uh-huh.

DETECTIVE THOMAS: What do you want to do? Now you say we can talk. I don't know what that means.

TUCKER: I probably want to talk to an attorney.

DETECTIVE THOMAS: Ok. I just didn't hear you, Travius.

TUCKER: I said I probably want to talk to an attorney.

DETECTIVE THOMAS: Okay. You probably—so you want to talk to an attorney?

TUCKER: I think so.

DETECTIVE THOMAS: Okay. Well thinking so and wanting one is two different things, okay? You keep saying probably, maybe—you know, you tell us."

Thereafter, the defendant made inculpatory statements, including statements that indicated that it was the defendant's intent to commit a robbery on the night in question.

¶ 6 Prior to trial, the defendant moved to suppress any statement that he made after he requested an attorney at the interview. The circuit court denied the defendant's motion to suppress, determining that though the defendant clearly and unequivocally requested an attorney during the interview, he reinitiated the interview and thus waived his right to counsel.

¶ 7 At trial, Detective Thomas gave testimony concerning the statements the defendant made during the interview. The State presented the testimony of three witnesses who were present at the apartment the night the victim was shot. Each witness testified that the defendant participated in the attempted robbery that ended in the victim's death.

¶ 8 Medical testimony at trial showed that the victim died of a gunshot wound to the chest.

¶ 9 The jury found the defendant guilty of felony murder based on an accountability theory. The defendant filed a posttrial motion arguing, *inter alia*, that the court erred in

denying the motion to suppress. The court denied the posttrial motion. The court sentenced the defendant to 55 years' imprisonment. The defendant filed a motion to reconsider sentence, which the court denied. The defendant appeals.

¶ 10

ANALYSIS

¶ 11 The defendant argues, and the State concedes, that the defendant's confession was involuntary and in violation of the fifth and fourteenth amendments of the United States Constitution and article I, sections 2 and 10, of the Illinois Constitution and thus should not have been admitted at trial. See *Edwards v. Arizona*, 451 U.S. 477 (1981); *In re Christopher K.*, 217 Ill. 2d 348, 376 (2005). We agree.

¶ 12 The circuit court found that the defendant unequivocally and unambiguously requested an attorney. However, the court further found that the defendant reinitiated the interview when he said "No, we can talk" in response to the detective's question as to whether he wanted to stop the interview. We find *People v. St. Pierre*, 122 Ill. 2d 95 (1988), akin to this case with respect to the issue of an involuntary confession. In *St. Pierre*, the assistant State's Attorney asked the defendant, " 'Do you understand that if you cannot afford to hire a lawyer, one will be appointed by the court to represent you before any questioning?' " *Id.* at 108. The defendant responded, " 'Yes.' " *Id.* Then the assistant State's Attorney asked, " 'Do you wish one?' " to which the defendant responded, " 'Yes.' " *Id.* After the defendant answered "Yes," however, the assistant State's Attorney then asked, " 'Would you like to speak to a lawyer now?' " and the defendant responded, " 'No, no, after, that comes after, right?' " *Id.* The Illinois Supreme Court found that the defendant clearly and unequivocally invoked his right to counsel and to have counsel

present during the interview. *Id.* at 113. The court further determined that the defendant's response to the follow-up question was not a reinitiation of the interview such that it would constitute a waiver of his right to have counsel present. *Id.* Thus, statements by an accused following a clear request for counsel are irrelevant in determining whether there has been an effective invocation of that right. *Id.* at 112. Where an accused has invoked his right to an attorney during police questioning, rather than solely his right to remain silent, his later waiver of the right to counsel upon police-initiated reinterrogation will not be given legal cognizance; instead, it will be deemed involuntary as a matter of law. *People v. Warner*, 146 Ill. App. 3d 370, 376 (1986).

¶ 13 Here, when Detective Graul asked the defendant, "Do you want to stop the interview?" and the defendant responded with "No we can talk," the defendant was not reinitiating the interview such that it would constitute a waiver of his right to counsel. As in *St. Pierre*, the defendant clearly and unequivocally stated that he wanted an attorney. Any question asked thereafter was in violation of his right to counsel. *St. Pierre*, 122 Ill. 2d at 112. Thus, the circuit court erred when it allowed evidence of the involuntary confession to be admitted at trial.

¶ 14 The defendant argues that the admission of the unlawfully obtained confession is reversible error. While the State conceded that the admission of the involuntary confession was error, the State argues that the error was harmless. In order for an error to be harmless, a reviewing court must be satisfied beyond a reasonable doubt that the error did not contribute to the defendant's conviction. *Chapman v. California*, 386 U.S. 18, 24 (1967); *People v. Childs*, 159 Ill. 2d 217, 228 (1994). The State bears the burden of

proving that the error was harmless beyond a reasonable doubt. *People v. Thurow*, 203 Ill. 2d 352, 363 (2003). Confessions carry extreme probative weight, and their effect on a jury is incalculable. *People v. Fillyaw*, 409 Ill. App. 3d 302, 316 (2011). The admission of an unlawfully obtained confession is rarely harmless error. *People v. Harris*, 2012 IL App (1st) 100678, ¶ 78. Indeed, in *St. Pierre*, the court found that the other evidence presented at trial would have been enough to prove the defendant guilty, but the court reversed and remanded for a new trial due to the admission of the involuntary confession. *St. Pierre*, 122 Ill. 2d at 115-16; see also *People v. Hernandez*, 362 Ill. App. 3d 779, 790 (2005).

¶ 15 Here, we cannot agree with the State that the circuit court's denial of the motion to suppress the confession and the admission of the involuntary confession were harmless errors. The State argues that three witnesses reiterated what the defendant said in the interview with Graul and Thomas and thus the inclusion of testimony about the interview was merely cumulative. However, the defendant's attorney may have had a better opportunity to rebut the witnesses' testimony if the defendant's involuntary confession had been excluded. In fact, the defendant's entire trial strategy could have potentially changed when the circuit court denied the motion to suppress. Furthermore, the defendant's confession included information that indicated his intent when arriving at the crime scene, which was to attempt to commit an armed robbery. The defendant's intentions when entering the apartment were an important element of the case. The only way the jury heard of the defendant's intent was through Thomas's testimony regarding the defendant's confession. There is no way of knowing what effect the confession had

on the jury. Thus, we find that the circuit court committed reversible error when it denied the defendant's motion to suppress his confession.

¶ 16

CONCLUSION

¶ 17 For the foregoing reasons, we deny the State's motion to strike section III of the defendant's supplemental brief and we reverse the judgment of the circuit court of Williamson County and remand the case for a new trial.

¶ 18 Reversed and remanded.