

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

RODRICK D. DAVIS,

Defendant-Appellant.

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UNPUBLISHED

September 20, 2002

No. 228528

Wayne Circuit Court

LC No. 99-003770

Before: Talbot, P.J., and Gage and Wilder, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of two counts of felony murder, MCL 750.316(1)(b). The trial court sentenced defendant to concurrent life sentences with no possibility of parole. We reverse.

**I. Facts and Proceedings**

In the early morning hours of March 24, 1999, a house located at 12753 Stoepel in Detroit caught fire. Inside the house were three people, eighteen-year-old April Fleming, her mother, Yvonne Fleming Seay, and her father, John Seay. Because the doors were barred by security gates, they retreated to an upstairs bedroom. John Seay ordered his wife and daughter to jump out a second story window, and then he jumped out another window. John Seay survived the fire, but April and her mother did not escape and died from carbon monoxide poisoning.

The Detroit Fire Department investigated and concluded that the cause of the fire was arson. Albert Hood, an expert in the cause and origin of fires from the Detroit Fire Department Arson Squad, testified that in his opinion the fire was intentionally set, using gasoline poured next to the house. The fire was very fast-burning, progressing to an extremely dangerous level in a matter of minutes. Samples, found partially through the use of an arson dog, confirmed the presence of gasoline in various areas behind the house.

The morning of the fire, April's sister called one of April's friends, LaReesa Linder, to tell her April was dead and to ask her to find defendant, April's former boyfriend. Linder and another friend, Sherita Lyons, drove to defendant's home and told him what had happened. Linder and Lyons testified that defendant did not seem upset, that defendant told them to "quit playing," and asked "how could this happen?" Defendant confirmed the conversation and stated he did not believe Linder and Lyons because they were "snickering" when they told him the

news. The three drove to April's house together in Linder's car. When they arrived at April's house, April's sister accused defendant of stalking April. Defendant did not respond to the accusation, and his uncle pulled him away.

The Detroit Police Department began their homicide investigation at the scene, including the gathering of statements. Officer Terrell Shaw spoke to Rochell Carr, one of April's friends, who told him that defendant had been stalking April and that April's sister had accused defendant of stalking April. Officer Shaw asked Seay if he could identify defendant, and after he did so Officer Shaw directed officers to place defendant in a police car and take him around the corner. Defendant was placed in the back of a police car and taken around the corner from the scene. Defendant asserts he was handcuffed, but this was denied by the police at trial. Approximately fifteen minutes later, Officer Shaw moved defendant to his car and took defendant to the precinct. Defendant claimed he was again handcuffed. Officer Shaw, however, denied at the suppression hearing that defendant was handcuffed or even under arrest. At trial, though, Officer Shaw admitted that he arrested defendant himself before he took defendant to the precinct.

After defendant's arrest, Carr apparently also told the police that April had told her that defendant had followed April the day before the fire and when confronted, told April he didn't have anything better to do. Carr also told the police that she had spoken to April on the telephone from 11:45 p.m. until 1:30 a.m. the morning of the fire, that she heard call waiting clicking in a number of times during the conversation, and that April told her on one occasion that her sister was calling, but another time told her that defendant was calling. Carr told the police that the conversation ended when April told Carr she had to get off the phone because "Roderick keeps calling me." Also in the evening after defendant had been arrested, Linder told the police about the encounter with defendant after she learned of April's death, and that April had said that defendant told April that he could not live without her. Lyons told Arson Investigator Hood on the morning of March 24, 1999, that she thought defendant's reaction to April's death was strange and that he did not cry. Lyons did not tell the police about the stalking accusation made by April's sister, however, until her statement was taken the evening after defendant was arrested. There was no evidence that Officer Shaw was aware of any of this additional information when he arrested defendant.

Defendant was questioned at the precinct, either in an interrogation room or the general area with the desks and other office equipment. Before questioning, Officer Shaw read defendant his *Miranda*<sup>1</sup> rights. Defendant read aloud a form explaining his rights and initialed and signed it. According to Officer Shaw, defendant said he was in the twelfth grade, did not graduate, and could read and write. At 10:10 a.m. on March 24, 1999, defendant signed a statement that he did not have a car, that he did not call April on the night of the fire, that they broke up in January and she was dating other people, and that he knew nothing about the fire.<sup>2</sup> Officer Shaw testified that defendant did not appear intoxicated, ill, or under the influence of drugs or alcohol, and that he was given food and drink. Defendant denied he was given any food, alleging that he was left in the interrogation room all day until approximately 9:00 p.m.

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<sup>1</sup> *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

<sup>2</sup> This statement was read, in its entirety, into the trial record by Officer Shaw.

when another officer came in, told him he was lying, and threatened to arrest his mother if he found out defendant was lying. Some time later defendant was taken to the cellblock and placed in a cell.

Defendant was not removed from his cell until March 26, 1999, when he was taken to the Michigan State Police offices for a polygraph test. Apparently, the polygraph was requested by the Detroit Police Department, although the circumstances of the request were not clear in the lower court record. Lieutenant Ernest Myatt was the Michigan State Police polygraph examiner. Before beginning the test, Lieutenant Myatt spoke with defendant. Lieutenant Myatt claimed that he advised defendant of his *Miranda* rights and his rights related to the polygraph. In response to Lieutenant Myatt's questions, defendant stated that he had eaten and slept and that he was not under a doctor's care. Defendant read each of the rights, initialed each, and signed the form. Lieutenant Myatt stated that he spoke to defendant for approximately forty-five minutes before the test and reviewed the questions with defendant.

After administering the test, Lieutenant Myatt reached the conclusion that defendant was being evasive, and he shared that opinion with defendant and gave defendant reasons why he should tell the truth. They then talked again, and defendant wrote out a different statement, this time confessing that he set the fire by mistake with a lighter after getting gasoline from a gas can in the trunk of his car. According to Lieutenant Myatt, defendant was not under duress and was permitted to make corrections to the statement. Defendant's second statement was in his own handwriting and he signed the statement.

Defendant claimed that although he wrote and signed the statement, it was false. He stated that he was pressured to make a statement and that Lieutenant Myatt told him that if he did not make the statement, he would get life in prison. Defendant testified that Lieutenant Myatt told him what to write and he wrote it. He also claimed that he wrote the statement because he had not eaten in three days, he was afraid, and he wanted to go home. Defendant stated that the police gave him food only after he signed the statement and took a photograph of him eating.<sup>3</sup> He said that his confession was not voluntary, although he admitted he went to the state police offices voluntarily.

After defendant signed the statement with Lieutenant Myatt, he was returned to the Detroit Police Department precinct by Officer James Fisher of the Detroit Police Department. Officer Fisher again read defendant his constitutional rights and had him initial and sign a form, then interviewed defendant again based on information from Lieutenant Myatt's interview. Defendant then made a third statement that was comprised of questions and answers, and in this statement defendant again confessed to setting the fire, this time admitting that the act was intentional and adding more detail. Each page was signed by defendant. The statement referred to a gas can thrown in a garbage can and the clothes he was wearing when he set the fire. Based on that information, Officer Fisher asked defendant to show them where the gas can was located. According to Officer Fisher, defendant led them to the dumpster and the gas can was removed

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<sup>3</sup> Oddly enough, the police did take a photograph of defendant eating and introduced it into evidence.

and placed in evidence. In addition, the police got a search warrant and consent from defendant to search his home for the clothes.

Defendant denied making the third statement, claiming that he just heard it being typed. He further claimed that he did not make any corrections to the statement, as Officer Fisher alleged, and that he was promised that he could eat and go home if he signed. Defendant stated that Lieutenant Myatt told him an address for the gas can location, he never took the officers to the dumpster, and Lieutenant Myatt suggested the clothes defendant was wearing that night based on information he had told other officers earlier. Defendant claimed that he thought they would send him home if he confessed.

A felony warrant was issued for defendant on March 27, 1999. Defendant was not arraigned until March 28, 1999.

Before trial, defendant moved to suppress the confessions and sought a *Walker*<sup>4</sup> hearing. Defendant alleged that he was arrested without probable cause and that his confessions were not voluntary. After the hearing, the court denied defendant's motion, finding probable cause for his arrest. The court made no specific determination regarding the voluntariness of defendant's confessions.

Defendant's case was tried before a jury. Defendant was convicted of two counts of felony murder and acquitted of attempted murder of John Seay. The court sentenced defendant to concurrent life sentences without possibility of parole.

## II. Standard of Review

A trial court's decision on a motion to suppress is reviewed de novo. *People v Custer*, 465 Mich 319, 326; 630 NW2d 870 (2001); *People v Beuschlein*, 245 Mich App 744, 748; 630 NW2d 921 (2001). The court's underlying findings of fact supporting that decision are reviewed for clear error. *Custer, supra* at 325.

## III. Analysis

Defendant argues that the trial court erred by denying his motion to suppress because the police did not have probable cause for his arrest, and that accordingly, his statements made while being held pursuant to the illegal arrest were inadmissible. We are compelled to agree.

As a preliminary matter, we find that defendant was arrested the morning of March 24, 1999, at the crime scene. A person is "seized" within the meaning of the Fourth Amendment if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave. *People v Daniels*, 186 Mich App 77, 80; 463 NW2d 131 (1990), citing *Michigan v Chesternut*, 486 US 567, 573; 108 S Ct 1975; 100 L Ed 2d 565 (1988). The testimony of Officer Shaw makes it clear that defendant was not, in fact, free to leave at the time he was taken from the crime scene to the police station.

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<sup>4</sup> *People v Walker (On Rehearing)*, 374 Mich 331, 338; 132 NW2d 87 (1965).

A police officer may arrest a person without a warrant if a felony has been committed and the police officer has reasonable (probable) cause to believe the person committed the felony. MCL 764.15(1)(c); *People v Champion*, 452 Mich 92, 115; 549 NW2d 849 (1996). Probable cause to arrest exists if the facts available to the officer at the moment of arrest would justify a fair-minded person of average intelligence to believe that the suspected person has committed a felony. *People v Thomas*, 191 Mich App 576, 579; 478 NW2d 712 (1991), citing *People v Oliver*, 417 Mich 366, 374; 338 NW2d 167 (1983).

The record establishes that at the time Officer Shaw arrested defendant, Officer Shaw was aware only that Carr and April's sister had accused defendant of stalking April. While this information might constitute reasonable grounds to consider defendant a *suspect* in the felony murder, it is insufficient to establish probable cause to arrest for the charge of felony murder. See *People v Kelly*, 231 Mich App 627, 632-633; 588 NW2d 480 (1998); *Thomas, supra* at 579. We conclude, therefore, that defendant's arrest was illegal. We also conclude that on the record before us, defendant's statements were the product of the illegal arrest and that the statements must be suppressed.

As noted above, during the three days that defendant was held without a warrant, defendant made inculpatory statements that he had set the fire that resulted in the decedents' deaths. "[W]hen an 'unlawful detention has been employed as a tool to directly procure *any* type of evidence from a detainee[.],' . . . the evidence is suppressed under the exclusionary rule." *Kelly, supra* at 634, quoting *People v Mallory*, 421 Mich 229, 240-241, 243, n 8; 365 NW2d 673 (1984) (emphasis in original). The mere fact of an illegal arrest, however, does not per se require the suppression of a subsequent voluntary confession, *People v Manning*, 243 Mich App 615, 636-637; 624 NW2d 746 (2000); *Kelly, supra* at 634, as the giving of Miranda warnings, the temporal proximity of the arrest and the confession, the purpose and flagrancy of the official misconduct, and the presence of intervening circumstances are important factors in determining whether the confession was obtained by exploitation of the illegal arrest. *Brown v Illinois*, 422 US 590, 602-603; 95 S Ct 2254; 45 L Ed 2d 416 (1975). "Intervening circumstances can break the causal chain between the unlawful arrest and inculpatory statements, rendering the confession 'sufficiently an act of free will to purge the primary taint' of the unlawful arrest." *Kelly, supra* at 634, quoting *Brown, supra* at 602. For example, where the police subsequently acquire evidence sufficient to establish probable cause before the contested statements are made, suppression of the statements is not required. *Kelly, supra* at 635-636. The burden of establishing the admissibility of the statements rests with the prosecution. *Brown, supra* at 604.

We conclude that the primary taint of the illegal arrest was not sufficiently attenuated by the evidence subsequently obtained in this case to render defendant's statements properly admissible. While the police obtained additional information that defendant was stalking April prior to the fire, none of the information connected defendant with the fire. Thus, the police had insufficient information apart from defendant's statements to establish post-arrest probable cause justifying admissibility of the statements. In addition, although defendant received Miranda warnings at least twice before he gave his first inculpatory statement more than two days after his arrest, *Miranda* warnings alone are insufficient to attenuate an illegal arrest. *People v Emanuel*, 98 Mich App 163, 177; 295 NW2d 875 (1980). Similarly, a lengthy time span between arrest and confession is not, in and of itself, always sufficient to dissipate the initial illegality. *People v Casey*, 102 Mich App 595, 604; 302 NW2d 248 (1980). Nor were

defendant's apparently evasive responses to the polygraph test a sufficient intervening factor to attenuate the taint. *Casey, supra* at 603-604. Finally and significantly, there is no evidence in the record establishing any legitimate or good faith purpose for arresting defendant without probable cause, suggesting that the purpose of defendant's arrest was to obtain defendant's confession. The suggestion is particularly strong in light of the fact that defendant was detained without the issuance of a warrant for three days and was not arraigned until four days after his arrest. This Court has consistently condemned the practice of arrest for investigation or for questioning, and we do so here. *Kelly, supra* at 634. For all the reasons stated above, we find that the prosecution has failed to meet its burden of proving that defendant's unlawful detention was not used to secure evidence against defendant and that defendant's statements should be admissible in spite of his illegal arrest.

Reversed and remanded. We do not retain jurisdiction.

/s/ Michael J. Talbot

/s/ Hilda R. Gage

/s/ Kurtis T. Wilder