



**In the
Missouri Court of Appeals
Western District**

STATE OF MISSOURI,)
)
Respondent,) WD79955
)
v.) OPINION FILED: June 26, 2018
)
JEREMY L. MAPLES,)
)
Appellant.)

Appeal from the Circuit Court of Vernon County, Missouri
The Honorable William B. Collins, Judge

Before Division Three: Victor C. Howard, Presiding Judge, Cynthia L. Martin, Judge
and Gary D. Witt, Judge

Jeremy Maples ("Maples") appeals his conviction of murder in the first degree from the Circuit Court of Vernon County. Maples argues that the trial court erred in admitting incriminating statements he made to Detective Steve Schlup ("Detective Schlup") at the jail sally port because he was under custodial interrogation without being first warned of his *Miranda*¹ rights. Maples further argues that the trial court erred in admitting two other incriminating statements he made later, following the statements made at the jail sally port

¹ *Miranda v. Arizona*, 384 U.S. 436 (1966).

because the *Miranda* warnings provided prior to those statements were ineffective due to the prior *Miranda* violation at the jail sally port interview. Maples argues that the trial court abused its discretion in sustaining the State's objection to Maples's offer of proof regarding information that another person confessed to the murder. We affirm.

Statement of Facts²

Belinda Beisly ("Belinda")³ was estranged from her husband Bob Beisly II ("Bob II"). On July 14, 2009, Belinda worked her normal 3 p.m. to 11 p.m. shift at work. She was seen by friends from work entering a Walmart store after her shift ended on the 14th. On July 15th Belinda did not show up to work and her friends from work were not able to reach her. A deputy from the Vernon County Sheriff's office was sent to perform a wellness check on Belinda at her home. Belinda lived in a house located on a farm operated by Bob II. The deputy found the front gate to Belinda's property locked and her vehicle located next to the house, with the engine running, the driver's door open, and groceries in the back seat. The front door to the house was partially open but the screen door was closed. The deputy knocked and after receiving no response checked around the outside of the house. A window at the rear of the house was broken out and the deputy called for backup. When additional deputies arrived they entered the house and found Belinda dead on the floor.

² "[T]he facts and any reasonable inferences arising therefrom are to be viewed in a light most favorable to the ruling of the trial court." *State v. Carter*, 955 S.W.2d 548, 560 (Mo. banc 1997); *State v. Minner*, 311 S.W.3d 313, 320 (Mo. App. W.D. 2010).

³ Because several witnesses at the trial are family members and share last names, we use the first names of these individuals for clarity. In addition, Bob Beisly II and Bob Beisly III are father and son respectively and share the same full name. We refer to them as "Bob II" and "Bob III" for ease of reference. No disrespect or familiarity is intended as to any of these individuals.

The cause of death was shotgun wounds to the head and chest.⁴ The shotgun wound to the head severed her brain stem and the shotgun wound to the chest was in a downward angle and destroyed her liver. Either wound would have been fatal. The time of death was approximately midnight on July 14. A Browning 12 gauge semi-automatic shotgun was determined to be missing from Belinda's home following the murder, but it was never determined if this was in fact the murder weapon. The murder weapon was never found.

The murder investigation remained open and unsolved for several years. Bob II had previously been charged in Belinda's death, and spent 18-20 months in jail before the State dismissed the charges against him.

At the time of the murder, Maples worked for Bob II doing farm work including on the farm where Belinda lived. Maples's work on the farm during the relevant time frame included brush hogging (mowing tall grass and small trees with a tractor and large mower) and planting crops. Maples was questioned regarding Belinda's murder a week after Belinda's body was found. At that time, Maples stated that on July 14, 2009, the day of the murder, his truck ran out of gas on the way to the farm and that he contacted Bob II who towed his truck the rest of the way to the farm where they put fuel into it. After working, Maples dropped his truck off with his girlfriend, Tammy Kronk ("Kronk"). Maples told Kronk that he would be brush hogging on the farm that evening, and asked Kronk to pick him up after she got off work. Maples told the police he brush hogged until about 10:30 p.m., at which time Kronk picked him up in his truck and drove back to their home where

⁴ The shotgun shells used in the murder were slug loads. A standard shotgun shell includes many small projectiles which are all fired at one time from a single shotgun shell. A slug load is a shotgun shell which fires a single large projectile.

he went to sleep. He stated he woke up the next morning around 9 or 10 a.m. and returned to work on the farm, assisting Bob II in repairing a mower. Maples stated that he first learned of the murder the evening following the murder when Bob II's girlfriend told him that Belinda had been killed. Maples was then confronted with inconsistencies between his statements and phone records⁵ and Kronk's statements to police. Maples asked to stop the interview and left the sheriff's office.

Kronk originally told police that she picked up Maples at the farm at 10:30 p.m., but later in the same conversation, changed her statement and admitted that Maples had asked her to tell police the incorrect time. She testified that on the night of the murder she went to a bar with friends from work. She became intoxicated and had her daughter pick her up and take her home around 12:45 or 1 a.m. and she went to sleep. Around 1:30 or 2 a.m. Maples called her and asked her to come pick him up from the farm, as he had finished working. Kronk woke up her daughter and her daughter's boyfriend to drive her to go pick up Maples, as she was still intoxicated. They picked him up in a car, not in his truck. When they arrived at the farm they located Maples on the gravel road walking away from the farm. She found this strange as she had always in the past picked him up at the tractor or in the field where he was working. This was the first and only time she picked him up walking on the road. They arrived home around 2 or 2:30 a.m. When they arrived home, Maples asked Kronk to wash his clothes. She put his clothes in the washer and went back

⁵ Phone records showed phone calls between Maples and Kronk at 2 a.m. the night of the murder and showed a phone call from Maples to Bob II at 5:20 a.m. the morning after the murder. This was the only day that phone records showed a call between Maples and Bob II this early in the morning. It was rare for any calls to occur much before 9 a.m.

to bed. She found the request to wash his clothes to be unusual because he never made such a request so late at night. Maples told her that if she spoke to the police to tell them that she picked him up at 10:30 p.m. that night. Later, Maples also requested that she get rid of the boots he had been wearing that day, which she did.

Travis Beisley⁶ ("Travis") gave a recorded statement to the police in September of 2012, several years after the murder. In that statement and in a later deposition⁷ Travis stated that approximately four months after the murder, Maples told him that the police would never solve the murder. Maples admitted to him that he killed Belinda and that he had snuck in the house wearing boots and camo and used the phrase "pop pop" when describing the shooting, indicating two shots. Maples told Travis he was going to be paid \$10,000 by Bob II, a little bit at a time for killing Belinda.

At the time of trial, Travis was in the Missouri Department of Corrections serving an unrelated sentence. When he took the stand at trial, after stating his name, he answered the prosecutor's questions with "I refuse to testify." After a recess and discussion with the court regarding his obligations to testify, Travis again took the stand before the jury. He then answered questions by stating he did not have any recollection of any conversations with Maples regarding the murder or recollection of giving his prior statement or deposition. In the questions he did answer Travis stated that he lied in his previous statement and deposition.

⁶ Travis Beisley is not related to Bob II or Bob III and his last name is spelled differently. We will also use his first name to avoid confusion.

⁷ This deposition was taken by Bob II's attorney during the time when the charges were pending against Bob II.

Maples Motion to Suppress His Statements

At trial, multiple statements made by Maples to law enforcement officers were presented to the jury. The trial court denied Maples's Motion to Suppress these statements and they were admitted at trial over objection.

In August of 2012 Maples was in the Vernon County Jail on unrelated charges. On August 22, 2012, Maples told jail staff that he wanted to talk to Jail Administrator, Mike Buehler ("Buehler") regarding information he had about a murder. Buehler asked Maples what he wanted to talk about. Maples requested a cigarette and to speak to his then fiancé Theresa Butler ("Butler"). Buehler took Maples to the sally port and gave him a cigarette. Maples stated he had information about Belinda's murder, and Buehler informed him that Detective Schlup was handling the investigation. Maples said he had a lot on his mind and wanted to talk to someone.

Maples's request to talk was communicated to Detective Schlup. Detective Schlup went to Maples's cell and asked if he wanted to see him and talk about anything. Maples said that he did want to talk but only if he could smoke a cigarette and if his fiancé Butler was present during the discussion. Detective Schlup explained that in order to bring in Butler, Maples "would have to maybe give a little bit more information as far as to make it worthwhile." Detective Schlup testified that he requested additional information because Maples and other inmates had previously made similar request for special treatment in return for information about other crimes, but when the special treatment was granted the inmate reneged on providing the information.

Detective Schlup took Maples to the sally port to continue the discussion so Maples could smoke. Buehler was also present. Maples was not handcuffed and did not have restraints on his legs or ankles. Detective Schlup testified that Maples was free to end the conversation at any time. Detective Schlup told Maples again that he "would have to maybe give me a little bit more information as far as what possibly it could be about that he could tell me pertaining to information in reference to the murder." Maples then stated the following: "On the day of Belinda's murder, [Bob II], had told him [Maples] that it would have to be done tonight." Detective Schlup then asked what Bob II had meant by this statement. Maples said Bob II was talking about killing Belinda. Maples stated that he and Bob II had discussed killing Belinda many times before and Bob II, on this occasion, had offered him \$10,000 to kill her. Maples then went on to tell Detective Schlup that he was supposed to get into the house any way he could, get a gun from the gun safe, wait for Belinda to get home from work and then kill her by shooting her. Maples said about midnight he drove the tractor from the part of the property where he had been brush hogging to the barn which was northeast of the house. He drove up to the barn and parked the tractor next to his truck. Maples walked from the barn to Belinda's house. He cut through the back, crossed the drive by the road and went over a fence. He then walked through the brush and trees to the back porch.

Maples told Detective Schlup that he went up to the back porch and found that the glass had been broken out of a window leading into the house. He told Detective Schlup that he climbed into the window which led into the dining, kitchen area, and it was at that time that he observed Belinda lying on the floor. It appeared that she had been shot once

in the chest area. When he left the house and went towards his truck, he saw another truck drive from the barn toward the Highway. When Maples got back to his truck it would not start so he called Kronk to pick him up and walked up to the road to meet her.

Maples said that when he entered the home he had not planned on killing Belinda. He was going to enter the house, get a gun from the safe like Bob II requested. Then he was going to go out and sit on the front porch and wait for Belinda to get home. Then when she got home, he was going to tell her that he was asked to kill her. He then was going to have her call the sheriff's office and then he was going to be cooperative and tell the officer exactly what he was asked to do regarding the murder of Belinda.

During this interview the only question Detective Schlup asked was what Maples meant by "it had to be done tonight." Maples provided all the above information without further question by Detective Schlup. After the above information was provided, Detective Schlup then began to ask questions to get additional details, at which point Maples said he was not going to continue to talk unless Butler was present. Detective Schlup then put Maples in an interview room, where he brought Butler.

When Butler entered the room, she and Maples hugged briefly. Maples explained that he wanted Butler present because he wanted her to know he was being honest now about the murder. Detective Schlup read Maples the *Miranda* warnings and conducted an audio taped interview which was played for the jury. Detective Schlup also filled out the top part of a form for Maples to provide a written statement, including Maples's name, address, and age. Below that information, the form included the *Miranda* warning. After Detective Schlup filled out the top of the form, he pointed to the *Miranda* language and

told Maples to read it. Detective Schlup gave Maples the form. Maples read the *Miranda* language and began writing his statement.

In Maples's written statement, he stated that about a year before the murder, Bob Beisly III ("Bob III") told Maples he would give Maples a truck if he killed Belinda. Maples refused. Maples also stated that Bob II also asked Maples to kill Belinda and that Bob II offered him \$10,000 to commit the murder. Maples refused. Maples acknowledged that he entered the house on the day Belinda was killed but that he left the house when he saw that she was already dead. He stated that after he left the house he saw another truck leave the property. He then went back to his own truck, which would not start so he called Kronk to pick him up.

After he wrote his statement, Maples was told that he needed to fill out the top portion of the second page of the form, which was identical to the first page, asking for the same personal information and again included the *Miranda* warnings.

The next day after the formal interview ended Maples told Buehler that he wanted to clarify his statement. Detective Schlup and Detective Brad Bearden ("Detective Bearden") interviewed Maples again on August 23, 2012. At the beginning of the interview, Maples was again given his *Miranda* warning by Detective Schlup and Maples indicated he understood. Maples repeated what he had told Detective Schlup the day before and provided some additional details. Those details included that the day of the murder Bob II had said: "it needed to be done that day even if he [Bob II] had to do it himself." Maples also indicated he was familiar with Belinda's work schedule and that she got off work late in the evening, had been in her home before and knew where her gun safe was

located. While he had initially told the officers that he had been wearing Justin brand boots that day, in his new statement he indicated he was wearing Doc Martens brand boots. Maples was asked about the early morning phone call to Bob II the morning after the murder.⁸ Maples said that was to discuss parts for the brush hog mower which had broken the previous evening. Maples said he and Bob II never discussed the murder after it occurred. He had been paid an average of \$250-\$300 per week prior to the murder but after the murder Bob II paid him an extra \$600 per month. Maples stated that he never asked why he was receiving the extra money.

Maples told the officers that he was giving the statement because it had been eating at him and that Butler had told him many times that he was a different person after the night of the murders and that he had been using more drugs and had switched from smoking methamphetamine to injecting methamphetamine with a needle.

Maples was subsequently charged with first degree murder as a persistent offender. Maples filed a Motion to Suppress seeking to suppress the statements he made at the sally port, his oral and written statements on August 22, and the interview on August 23. The trial court denied Maples's Motion to Suppress. Maples objected at trial to testimony regarding the interviews and was granted a continuing objection.

Evidence Tim Dowdy Confessed to the Murder

Maples sought to offer evidence that a man named Timothy Dowdy confessed to other people that he committed the murder. The State filed a Motion in Limine to exclude

⁸ The phone records indicated the call was at 6:30 a.m. however, the parties stipulated the records were based on Eastern Time and the actual time would have been one hour earlier in Central Time.

evidence that someone else committed the offense. Maples made an offer of proof during the trial by calling multiple live witnesses over several days after the jury was sent home for the evening. The trial court refused to allow the evidence to go before the jury.

Seth Dowdy ("Seth") testified in Maples's offer of proof. Timothy Dowdy ("Timothy") was Seth's father. Seth lived with Carrie Chastain ("Chastain") during the relevant time period. Timothy lived with Seth and Chastain for a few months, including January 2014. During this time Timothy gave Seth a gun to sell. At some point in January 2014, Timothy had a breakdown in front of Seth. Timothy and Seth had been drinking whiskey, beer, taking Xanax, and smoking marijuana. Timothy told Seth that he couldn't believe he gave Seth a gun to sell. Seth testified that Timothy never mentioned Belinda's murder at this time or any other time.

Seth sold the gun Timothy was talking about in 2013 or 2014. The gun was a 12 gauge shotgun, but there was no physical evidence to tie this gun to the murder or the gun missing from Belinda's home. It was not uncommon for the Dowdys to buy and sell things, including guns. Seth testified that the combination of drugs and alcohol would make Timothy say weird things, such as that he was a sniper in the Vietnam war, even though he was never a sniper nor in the Vietnam war.

Maples also called Janice Crowe ("Crowe ") to testify as part of the offer of proof. Crowe testified that she and her daughter Chastain had lived with Seth for a period of time. During that time, she overheard a conversation between Seth and her daughter where Seth stated that Timothy had told him that he was involved in the murder of "the Beisly woman"

and that Timothy had given Seth the gun to dispose of. She overheard Seth stating that he and Timothy were drunk and high on drugs at the time Timothy made the admissions.

At the time of trial, Crowe's daughter Chastain was in a drug rehabilitation facility. A body attachment was issued and she was brought before the court as part of the offer of proof, later during the trial. Chastain testified in Maples's offer of proof that she, Seth, and Timothy had been doing drugs and drinking for a couple of days, when one evening Chastain and Seth walked into the house and saw Timothy "on the floor in a fetal position, curled up, just bawling his eyes out, crying." Chastain testified that "[Timothy] was just crying that basically that he was not going to be forgiven, he was not going to -- to the concept of when -- he is wailing about not being forgiven, they're not going to forgive me, the wrong man is going to jail." Timothy never said who the wrong person going to jail was and Chastain said she did not know who he was talking about at the time.

Chastain further testified that Timothy had said he shot "Bea". At the time she did not know who he was referring to and did not know that Bea was a nickname for Belinda. It was only later that she figured out what she believed he was referring to. Timothy never provided Chastain any details regarding Belinda's murder which could be used to corroborate his involvement or the truthfulness of the statements. Chastain also agreed that she and Timothy were not close. She told Detective Bearden that she did not come forward earlier to report what Timothy had told her because originally she did not believe him but after talking to an investigator with the Public Defender's office she began to believe it may be true.

Detective Bearden also testified in Maples's offer of proof. He had interviewed Timothy after the murder. Timothy had denied ever being at Belinda's home or the farm prior to the murder. Detective Bearden also interviewed Chastain. Chastain told Detective Bearden that Timothy had made the following statement to her on January of 2014: "The kid didn't know what he was walking into." Chastain said she did not know who Timothy was referring to when he made that statement. Chastain also said that Timothy made the following statement: "I don't deserve to be alive. I killed her." Chastain again said she did not know who Timothy was referring to. Detective Bearden testified that there was no physical evidence that tied Timothy to Belinda's murder. Chastain, in a statement to law enforcement in March of 2015, stated that Timothy had told her "I killed Bea." Chastain first contacted law enforcement regarding Timothy's admissions of guilt on March 26, 2015, ten days after the prosecutor filed a *nolle prosequi* in the charges against Bob II.

Billy Fahnestock ("Fahnestock") also testified in Maples's offer of proof. At one point, Fahnestock was in the same jail pod as Bob II. During the offer of proof Maples asked Fahnestock to acknowledge a prior statement that Fahnestock made during a deposition regarding Bob II murdering Belinda. However, Fahnestock asserted his rights under the Fifth Amendment to the Constitution and refused to answer most questions and in those that he did answer he said he did not remember making any prior statements.

After the offer of proof, the trial court ruled that Chastain and Fahnestock would not be permitted to testify before the jury. The trial court reserved ruling on whether Seth would be permitted to testify. However, Maples never attempted to call Seth as a witness

before the jury or request a final ruling from the trial court on whether he would be allowed to testify.

The jury returned a verdict of guilty of murder in the first degree. On August 5, 2016, the trial court sentenced Maples to life in prison without the possibility of parole. This timely appeal followed.

Discussion

Maples raises four points on appeal. In Maples's first point on appeal, he argues that the trial court erred in admitting his statements to Detective Schlup in the sally port into evidence at trial because it violated his Fifth Amendment rights as he was not provided *Miranda* warnings prior to his statement. In Maples's second point on appeal, he argues that the trial court erred in admitting his formal statement made on August 22, 2012, because the improper tactics used during the sally port interview rendered the *Miranda* warning on August 22 ineffective. In Maples's third point on appeal, Maples argues that the trial court erred in admitting his statement made on August 23, 2012, because the improper tactics used in the sally port interview rendered the *Miranda* warning ineffective. In Maples's fourth point on appeal, he argues that the trial court abused its discretion in sustaining the State's objection to Maples's offer of proof regarding information that Timothy confessed to shooting Belinda because the exclusion of this evidence violated his rights under the Sixth and Fourteenth Amendments since the evidence was exonerating and made under circumstances providing considerable assurance of its reliability.

Analysis of Points One, Two, and Three

Standard of Review

"Review of a trial court's decision as to a motion to suppress evidence is limited to a determination of whether there is substantial evidence to support its decision." *State v. Tackett*, 12 S.W.3d 332, 336 (Mo. App. 2000). "The trial court's ruling on a motion to suppress will be reversed only if it is clearly erroneous." *State v. Hoyt*, 75 S.W.3d 879, 882 (Mo. App. 2002). "The trial court's ruling is clearly erroneous if this court is left with a definite and firm belief a mistake has been made." *Id.* "This court reviews the trial court's decision viewing the facts and reasonable inferences therefrom in the light most favorable to the trial court's order with the freedom to disregard contrary evidence and inferences." *Id.*

State v. Wilson, 169 S.W.3d 870, 875 (Mo. App. W.D. 2005).

Point One

In Maples's first point on appeal, he argues that the trial court erred in admitting the statements he made to Detective Schlup while in the sally port (for ease of reference we will refer to the August 22, 2012 interview in the jail sally port as the "Sally Port Interview") into evidence at trial over his objection. Maples argues that this ruling violated his Fifth and Fourteenth Amendment rights because the Sally Port Interview was a custodial interrogation and he was not given his *Miranda* warnings. Maples argues that since he did not receive a *Miranda* warning before his conversation with Detective Schlup, the statements he made at that time could not be used at trial.

"A criminal suspect is entitled to *Miranda* warnings, consistent with the Fifth Amendment right against self-incrimination, once the suspect is subjected to a custodial interrogation." *State v. McClendon*, 477 S.W.3d 206, 212 (Mo. App. W.D. 2015) (quoting *State v. Gaw*, 285 S.W.3d 318, 321 (Mo. banc 2009)). "Statements obtained by police

during a custodial interrogation not preceded by *Miranda* warnings are inadmissible in court." *Id.*

"Custody," under *Miranda* case law, is a term of art used to specify circumstances that are thought to present a serious danger of coercion. *Howes v. Fields*, 565 U.S. 499, 509 (2012)(holding that Howes was not in custody within the meaning of *Miranda*, despite him being a prison inmate, because Howes was free to end the questioning at any time and request to be returned to his cell). "A defendant's status as a prison inmate does not necessarily make an interview by prison officials 'custodial interrogation' requiring the protections set out in *Miranda*." *State v. Brown*, 18 S.W.3d 482, 485 (Mo. App. E.D. 2000).

Instead, when a prisoner is questioned, "language used to summon the individual, the physical surrounding of the interrogation, the extent to which he is confronted with evidence of his guilt, and the additional pressure exerted to detain him must be considered to determine whether a reasonable person would believe there had been a restriction of his freedom over and above that in his normal prisoner setting."

Baumruk v. State, 364 S.W.3d 518, 528 (Mo. banc 2012) (quoting *Brown*, 18 S.W.3d at 485).

Nothing in the record indicates that Maples was interviewed in a coercive atmosphere or that any coercive questioning techniques were used during the Sally Port Interview. Maples was not summoned for questioning. In fact, Maples summoned Detective Schlup because he wanted to voluntarily provide information to law enforcement regarding the murder. Until that point, Maples had not provided any information which would incriminate himself in the murder and there was no way for Detective Schlup to

know that he would incriminate himself instead of providing information incriminating to some other individual or suspect. Maples was outside in the sally port, smoking a cigarette as he had requested, not in a closed room as typically used in custodial interrogations. Maples was not confronted with any evidence against him. Detective Schlup merely came to the sally port at the request of Maples and told him that he would not be allowed to see his fiancé, as requested, unless he could provide some limited details of what information he was offering to provide so they could determine if he had anything of value to offer which would justify the special treatment of allowing him contact with his fiancé. The only question Detective Schlup asked was to clarify what Maples believed Bob II had meant when he said "it has to be done tonight." Detective Schlup testified that Maples could have ended the discussion at any time. When Detective Schlup began to ask further questions and Maples said he would not respond further until his fiancé was present, questioning ceased and his fiancé was brought to meet with him. Maples did not have any restraints on his hands or ankles. Under these facts, even though Maples was detained in the jail, he was not under custody for the purposes of *Miranda*. The trial court did not clearly err in determining that Maples's statements in the Sally Port Interview were not obtained in violation of *Miranda*. Point One is denied.

Points Two and Three

As Points Two and Three present the same issue, we choose to address them together. In Points Two and Three, Maples argues that the trial court erred in admitting his statements on August 22nd and August 23rd because the *Miranda* warnings provided prior to those statements were ineffective because the Sally Port Interview had already

established a *Miranda* violation. However, because we find that there was no *Miranda* violation in the Sally Port Interview and Maples raises no other arguments as to why the *Miranda* warnings provided on the subsequent interviews were ineffective we deny Points II and III.

Analysis of Point Four

Standard of Review

"A trial court has broad discretion to admit or exclude evidence," and such discretion will only be reversed for a clear abuse of discretion. *State v. Forrest*, 183 S.W.3d 218, 223 (Mo. banc 2006). A trial court abuses its discretion when its ruling "is clearly against the logic of the circumstances and is so unreasonable as to indicate a lack of careful consideration." *Id.* Further, "in cases concerning the admission or exclusion of evidence, we review for prejudice, not mere error, and will reverse only if the error was so prejudicial that it deprived the defendant of a fair trial." *State v. Cofield*, 95 S.W.3d 202, 205 (Mo. App. S.D. 2003) (internal quotation omitted). "Trial court error is not prejudicial unless there is a reasonable probability that the trial court's error effected the outcome of the trial." *State v. Pickens*, 332 S.W.3d 303, 318 (Mo. App. E.D. 2011).

Analysis

Maples argues in his fourth point on appeal that the trial court abused its discretion in sustaining the State's objection to Maples's offer of proof regarding information that Timothy confessed to shooting Belinda. Specifically, Maples argues that the exclusion of this evidence violated his rights under the Sixth and Fourteenth Amendments as the evidence was exonerating and made under circumstances providing considerable assurance

of its reliability. "Evidence that another person had an opportunity or motive for committing the crime for which the defendant is being tried is not admissible without proof that such other person committed some act directly connecting him with the crime." *State v. Schaal*, 806 S.W.2d 659, 669 (Mo. banc 1991), *cert. denied*, 502 U.S. 1075 (1992) (quoting *State v. Easley*, 662 S.W.2d 248, 251-52 (Mo. banc 1983)).

Hearsay is an "out-of-court statement that is used to prove the truth of the matter asserted and that depends on the veracity of the statement for its value." *State v. Kemp*, 212 S.W.3d 135, 146 (Mo. banc 2007). "[A]n out-of-court statement may be admitted pursuant to the constitutionally based hearsay exception in the due process clause." *State v. Taylor*, 298 S.W.3d 482, 493 (Mo. banc 2009). "This exception applies to hearsay statements that 'both exonerate the accused and are originally made and subsequently offered at trial under circumstances providing considerable assurance of their reliability.'" *Id.* (quoting *State v. Hutchison*, 957 S.W.2d 757, 761 (Mo. banc 1997)).

For a hearsay statement of another confessing to the offense which may exonerate the accused to be admitted into evidence at trial, "[t]hree circumstances of reliability have been recognized: '1) each confession is in a very real sense self-incriminatory and unquestionably against interest; 2) each statement was spontaneously made to a close acquaintance shortly after the murder occurred; and 3) the statements are corroborated by other evidence in the case.'" *Id.* (quoting *Hutchison*, 957 S.W.2d at 761). All three indicia of reliability must be met to allow admission of the hearsay statements into evidence. *State v. Anglin*, 45 S.W.3d 470, 473 (Mo. App. W.D. 2001).

In this case, it is clear that Timothy's statements to Chastain did not meet all three indicia of reliability. While Timothy's statements were made in front of Seth, who would qualify as a close acquaintance, Timothy's statements were not made shortly after the murder occurred. The statement to Chastain was ambiguous and was made years after the murder in question. Finally, there was no corroborating physical evidence to support the alleged confession. Maples pointed to no corroborating evidence from which the trial court could support a finding that the alleged confession was reliable. As stated *supra*, all three indicia of reliability must be met to support admission of the statements into evidence. *Anglin*, 45 S.W.3d at 473. Further, evidence was presented that Timothy's statements were in fact unreliable. Chastain testified that the statements were made under the influence of significant amounts of drugs and alcohol, which Seth testified had caused Timothy to make completely false and outrageous claims in the past. Chastain also testified that she originally did not even believe Timothy's statements but years later after discussions with a representative of defense counsel she thought they may be true. Chastain's testimony did not meet the requirements for admissibility.


We do not reach the issue of the admissibility of Seth's testimony as the trial court reserved ruling on this issue and Maples did not offer the evidence at trial or get a final ruling from the trial court. An appellate court is a court of review to determine whether the ruling of the trial court was correct. *State v. Davis*, 348 S.W.3d 768, 770 (Mo. banc 2011). Only those issues presented to or decided by the trial court will be considered on appeal. *Id.* Maples did not request plain error review of the admissibility of Seth's

testimony, but even plain error review is not available because the evidence was never offered at trial.

The trial court did not abuse its discretion in refusing to allow the hearsay testimony regarding Timothy's alleged confession as the three indicia of reliability were not met and evidence demonstrated the unreliability of the statements. Point Four is denied.

Conclusion

The trial court's judgement is affirmed.



Gary D. Witt, Judge

All concur