Opinion issued October 6, 2011.

In The
Court of Appeals
For The
First District of Texas

NO. 01-10-01089-CR

JAMES MUSGROVE, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 23rd District Court
Brazoria County, Texas
Trial Court Cause No. 59240

MEMORANDUM OPINION

A jury convicted James Musgrove, a prison inmate, of the offense of

unlawful restraint of a public servant. *See* TEX. PENAL CODE ANN. § 20.02 (a), (c)(2)(B) (West 2011). It assessed his punishment at six years' confinement. On appeal, Musgrove contends that the trial court erred in (1) allowing the State to introduce statements that he made to medical personnel in a prison hospital after the offense, and (2) denying his motion for a new trial, because the presence of TDCJ guards during the trial inherently prejudiced the jury against him. We hold that the trial court did not abuse its discretion in admitting Musgrove's statements to medical personnel or in denying his motion for a new trial. We therefore affirm.

Background

In November 2006, Michial Lawrence, a correctional officer at the Stringfellow Unit, escorted Musgrove and another inmate to work in the prison's laundry building. Once there, Musgrove created a disturbance, gained control of Lawrence's pepper spray canister, and used it to spray Lawrence and the other inmate. The other inmate rushed out of the building to seek help. Musgrove then cut his own throat and wrists with razor blades in an attempt to commit suicide. Several correctional officers entered the building, found Lawrence and Musgrove injured, and requested medical assistance.

Shortly after the incident, medical personnel evaluated Musgrove at a

correctional mental health hospital. As part of the intake process, Sharon Parker, a physician's assistant employed by the University of Texas Medical Branch, Correctional Managed Care, conducted an initial psychiatric evaluation. During the evaluation, she asked Musgrove to describe his patient history. He responded that he was depressed. He told her that he had attempted to commit suicide on the day of the incident with Lawrence. Musgrove's plan was to use pepper spray on Lawrence and tie Lawrence up so that he could kill himself without interference. Musgrove told Parker that his plan did not work out. He cut himself, but other guards came into the room too quickly.

At trial, the State offered Musgrove's medical records, including Parker's psychiatric evaluation, into evidence. Musgrove objected to the admission of the evaluation on the ground that it contained a statement made by him while he was in the custody and control of TDCJ without the warnings Article 38.22 of the Code of Criminal Procedure requires. *See* TEX. CODE CRIM. PROC. ANN. art. 38.22 (West 2005). The trial court overruled Musgrove's objection and admitted the records.

Also at trial, Musgrove objected to the number of uniformed correctional officers present in the courtroom. The trial court denied Musgrove's objection, indicating that two uniformed officers were present.

The State noted for the record that officers inside the bar were in plainclothes, and that all uniformed officers were outside the bar. Musgrove said that one uniformed officer was inside the bar. The record does not indicate the total number of correctional officers present, but reveals that the trial court had security concerns because Musgrove and TDCJ officers had an altercation two days earlier outside the courtroom.

After the jury found Musgrove guilty, Musgrove moved for a new trial based on the presence of the officers. In his motion for new trial, Musgrove offered an affidavit, in which he avers that six TDCJ officers were present at his trial, three in uniform, and the others in plainclothes. The trial court denied his motion.

Discussion

Admission of Psychological Evaluation

Musgrove contends that the trial judge erred in admitting Parker's evaluation on the ground that it was a product of a custodial interrogation that took place despite TDCJ's failure to give the warnings that the Texas Code of Criminal Procedure and *Miranda* require. *See* TEX. CODE CRIM. PROC. ANN. art. 38.22; *Miranda v. Arizona*, 384 U.S. 436, 478–79, 86 S. Ct. 1602, 1630 (1966).

We review the trial court's determination of admissibility under an

abuse-of-discretion standard. *Montgomery v. State*, 810 S.W.2d 372, 379 (Tex. Crim. App. 1990); *Roberts v. State*, 29 S.W.3d 596, 600 (Tex. App.—Houston [1st Dist.] 2000, pet. ref'd). A trial court has wide discretion in determining the admissibility of evidence; we do not disturb its ruling as long as it is "within the zone of reasonable disagreement." *Montgomery*, 810 S.W.2d at 391. A trial court's ruling falls within this zone if the record and the law applicable to the case reasonably support it. *See Willover v. State*, 70 S.W.3d 841, 845 (Tex. Crim. App. 2002).

The procedural safeguards of *Miranda* apply to custodial interrogations by law enforcement officers or their agents. *Wilkerson v. State*, 173 S.W.3d 521, 527 (Tex. Crim. App. 2005). State employment does not alone, however, make a person an agent of the state for the purpose of defining a custodial interrogation. *Id.* at 528. Different types of state employees serve different roles. *Id.* It is law enforcement's job to investigate crimes, arrest perpetrators, and gather evidence for a possible prosecution. *Id.* Not all government workers must be ready to administer *Miranda* warnings or comply with the procedural requirements of Article 38.22. *Id.* The ultimate inquiry is whether the custodial interview was "conducted (explicitly or implicitly) on behalf of the police for the primary purpose of gathering evidence or statements to be used in a later criminal

proceeding against the interviewee[.]" *Id.* at 531. The Texas Court of Criminal Appeals has recognized that *Miranda* is inapplicable to questioning by medical personnel. *Id.* at 528.

Musgrove argues that TDCJ officers placed him in "crisis management" confinement under harsh conditions after the laundry room incident, and that this increased level of confinement constituted custody in a situation in which officers are investigating a crime involving an inmate. *See Carter v. State*, 309 S.W.3d 31, 35–36 (Tex. Crim. App. 2010). Musgrove, however, made his statement to a physician's assistant in connection with an inpatient mental health evaluation. Parker testified that she conducted her evaluation as part of the patient intake process. In response to Parker's question about why Musgrove had come to the mental health facility, he volunteered that he was depressed and had used pepper spray on a TDCJ officer in an attempt to kill himself. Nothing in the record indicates that Parker took Musgrove's statement for the purpose of gathering evidence for a criminal proceeding.

Accordingly, the evidence supports the trial court's implied finding that Parker acted neither as a law enforcement agent, nor at the behest of law enforcement investigation the offense. The record supports the conclusion that Parker conducted an initial psychological evaluation to determine his

mental health status and the proper treatment for his problems, not to obtain information for a criminal investigation. *See Berry v. State*, 233 S.W.3d 847, 854–55 (Tex. Crim. App. 2007) (holding that CPS foster-care supervisor, who questioned defendant for purposes of finding proper 'placement' of defendant's children, was not "an agent of law enforcement"). We hold that the trial court did not abuse its discretion in admitting Musgrove's medical history into evidence as a part of Musgrove's medical records. *See id.* at 533.

Presence of Officers in Courtroom

Musgrove asserts that the trial court erred in denying his motion for new trial because the presence of extra guards in the courtroom inherently prejudiced the jury against him.

We review a trial court's ruling on a motion for new trial using an abuse-of-discretion standard. *Webb v. State*, 232 S.W.3d 109, 112 (Tex. Crim. App. 2007). A criminal defendant has a constitutional right to be tried by impartial, indifferent jurors whose verdict must be based upon the evidence developed at trial. *Howard v. State*, 941 S.W.2d 102, 117 (Tex. Crim. App. 1996). The presence of guards in a courtroom has the potential to violate that right by "creat[ing] the impression in the minds of the jury that the defendant is dangerous or untrustworthy." *Holbrook v. Flynn*, 475

U.S. 560, 569, 106 S. Ct. 1340, 1346–47 (1986). To prevail on a claim of prejudice resulting from external influence on the jurors, however, a defendant must show either actual or inherent prejudice. *Howard*, 941 S.W.2d at 117. To determine inherent prejudice, we look to whether "an unacceptable risk is presented of impermissible factors coming into play." *Holbrook*, 475 U.S. at 570, 106 S. Ct. at 1346–47. Inherent prejudice rarely occurs and "is reserved for extreme situations." *Howard*, 941 S.W.2d at 117.

Here, the record reflects that officers were present in the courtroom during trial (although a precise number appears only in Musgrove's affidavit). According to the trial court, two officers appeared in uniform. Musgrove does not complain about any actions by the officers present, nor does he complain that any of the officers engaged in conduct that influenced the jury. The presence of officers does not constitute inherent prejudice. *See Holbrook*, 475 U.S. at 571, 106 S. Ct. at 1347 (holding that supplementing customary courtroom security force by four uniformed state troopers sitting in first row of spectator's section did not deprive defendant of constitutional right to fair trial); *see also Howard*, 941 S.W.2d at 117 (holding that no inherent prejudice existed where twenty uniformed police officers were spectators in back of courtroom in trial of defendant for murder of state trooper); *Davis v. State*, 223 S.W.3d 466, 474 (Tex. App.—

Amarillo 2006, pet. ref'd, untimely filed) (holding that no inherent prejudice existed where eight uniformed officers were present in the courtroom). We hold that the officers' presence at trial did not present an unacceptable risk of inherent prejudice, in light of the trial court's security concerns, and in the absence of any evidence that they attempted to influence the jury by conduct or expression.

Conclusion

We hold that the trial court did not abuse its discretion in admitting Musgrove's statements to medical personnel or in denying his motion for a new trial. We therefore affirm the judgment of the trial court.

Jane Bland
Justice

Panel consists of Chief Justice Radack and Justices Bland and Huddle.

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