

**IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA**

CHRISTOPHER LEWIS WHINERY,) NOT FOR PUBLICATION

Appellant,)

v.)

Case No. F-2018-112

THE STATE OF OKLAHOMA,)

**FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA**

Appellee.)

MAY 16 2019

SUMMARY OPINION

**JOHN D. HADDEN,
CLERK**

LEWIS, PRESIDING JUDGE:

Christopher Lewis Whinery, Appellant, was tried without a jury and found guilty of first degree murder, in violation of 21 O.S.Supp.2012 § 701.7(C), in the District Court of Creek County, Case No. CF-2015-30. The Honorable Douglas W. Golden, District Judge, sentenced him to life imprisonment and a \$500.00 fine.¹

Mr. Whinery appeals in the following proposition of error:

1. The trial court committed reversible error when it allowed the prosecution to introduce Appellant's statements to the police given at the police station because at the time Appellant was in police custody and had not been advised of, or waived, his constitutional rights.

¹ Appellant must serve 85% of his sentence before being eligible for consideration for parole. 22 O.S.Supp.2015, § 13.1(1).

In Proposition One, Appellant claims the trial court erred by admitting, over his objection, statements obtained from him by a custodial interrogation without the warnings required by *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). We review this preserved challenge to the trial court's ruling for an abuse of discretion, deferring to the trial court's findings of fact unless clearly erroneous, and reviewing the legal conclusions derived from those facts *de novo*. *Bramlett v. State*, 2018 OK CR 19, ¶ 10, 422 P.3d 788, 793,

From our review of the record, the trial court's finding that Petitioner was not in custody at the time of his statements is not clearly erroneous. Appellant had neither been formally arrested nor had his freedom restrained to the degree associated with formal arrest at the time of questioning. *Miranda*, 384 U.S. at 467, 86 S.Ct. at 1624. The trial court properly concluded that no *Miranda* warnings were required at the time of questioning, and the resulting statements were admissible at trial. Proposition One is denied.

DECISION

The judgment and sentence is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2019), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF CREEK COUNTY THE HONORABLE DOUGLAS W. GOLDEN, DISTRICT JUDGE

APPEARANCES AT TRIAL

GRETCHEN GARNER MOSLEY
VELIA LOPEZ
601 S. HIAWATHA STREET
SAPULPA, OK 74066
ATTORNEYS FOR DEFENDANT

LAURA A. FARRIS
WILLIAM BARTLEY LOGSDON
ASST. DISTRICT ATTORNEYS
CREEK COUNTY COURTHOUSE
222 E. DEWEY AVE., STE. 302
SAPULPA, OK 74066
ATTORNEYS FOR THE STATE

OPINION BY: LEWIS, P.J.
KUEHN, V.P.J.: Concur
LUMPKIN, J.: Concur
HUDSON, J.: Concur
ROWLAND, J.: Concur

APPEARANCES ON APPEAL

MICHAEL D. MOREHEAD
P.O. BOX 926
NORMAN, OK 73070
ATTORNEY FOR APPELLANT

MIKE HUNTER
ATTORNEY GENERAL
KATHERINE R. MORELLI
ASST. ATTORNEY GENERAL
313 N.E. 21ST STREET
OKLAHOMA CITY, OK 73105
ATTORNEYS FOR APPELLEE