IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

JOSEPH WILLIS COLLINS,	)	NOT FOR PUBLICATION
	)	
Appellant,	)	
	)	
v.	)	Case No. F-2019-369
	)	
THE STATE OF OKLAHOMA,	)	
	)	
Appellee.	)	

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA
MAR - 4 2021
JOHN D. HADDEN
CLERK

SUMMARY OPINION

LEWIS, JUDGE:

Joseph Willis Collins, Appellant, was tried by jury and found guilty of assault with a dangerous weapon, in violation of 21 O.S.2011, § 645, after former conviction of two or more felonies, in the District Court of Comanche County, Case No. CF-2017-481.[1] The jury sentenced him to twenty-five years imprisonment. The Honorable Scott D. Meaders, District Judge, pronounced judgment and sentence, ordering the defendant to pay $7,504.00 in restitution as well as additional court costs. Mr. Collins appeals in the following propositions of error:

1. After a defendant invokes his right to terminate a police interview, the interview must immediately cease. Since the officer did not immediately cease

[1] Appellant was also acquitted of first degree burglary.

questioning and Appellant's subsequent statements were used against him, Appellant's 5th Amendment right against self-incrimination was violated;

2. Irrelevant and prejudicial testimony deprived Appellant of a fair trial;
3. Appellant was denied effective assistance of counsel when his trial counsel did not move to exclude irrelevant and prejudicial evidence;
4. There was insufficient proof of the victim's actual losses or the hardship to the defendant to support the restitution order;
5. The trial court erred in imposing an indigent defense fee greater than that allowed by statute;
6. The court erred in imposing juror fees in excess of what is allowed by statute;
7. The accumulation of error in this case deprived Appellant of the due process of law in violation of the Fifth and Fourteenth Amendments to the United States Constitution and Article II, § 7 of the Oklahoma Constitution.

In Proposition One, Appellant argues that the trial court erred by admitting in evidence statements obtained in violation of *Miranda v. Arizona*, 384 U.S. 436 (1966). Counsel raised no objection to the statements at trial, waiving all but plain error review. *Hogan v. State*, 2006 OK CR 19, ¶ 38, 139 P.3d 907, 923. To obtain relief, Appellant must show that a plain or obvious error affected the outcome of the proceeding. *Id.*, 2006 OK CR 19, ¶ 38, 139 P.3d at 923. We will correct plain error only if it "seriously affect[s] the fairness, integrity

or public reputation of the judicial proceedings" or otherwise causes a "miscarriage of justice." *Id.*

We find that after being warned of his *Miranda* right to remain silent and questioned in custody for approximately twenty minutes, Appellant's request, "Can I go back downstairs, please? 'Cause ya'll are making things awkward for me," objectively invoked his right to remain silent and triggered *Miranda's* requirement that all questioning cease immediately. We also reject the State's view that Appellant's second, explanatory sentence, "'Cause ya'll are making things awkward for me," rendered his request ambiguous or voluntarily re-initiated the interrogation under *Edwards v. Arizona,* 451 U.S. 447, 484-485 (1981). The remainder of the interrogation plainly violated *Miranda. Id.*, 383 U.S. at 474-74 (holding "any statement taken after the person invokes his privilege cannot be other than the product of compulsion, subtle or otherwise"). The resulting statements were inadmissible in the State's case-in-chief.

However, Appellant cannot obtain relief unless the Court also finds that the error seriously affected the fairness, integrity, or public reputation of the proceedings. Because the properly admitted evidence of Appellant's guilt is overwhelming, we find this error was

harmless beyond a reasonable doubt. *Harmon v. State*, 2011 OK CR 6, ¶ 32, 248 P.3d 918, 933 (finding erroneous admission of evidence is harmless where properly admitted evidence is overwhelming and prejudicial effect of improper evidence is comparatively insignificant). We therefore also conclude that the error did not seriously affect the fairness, integrity, or public reputation of the trial, and no relief is warranted. Proposition One is denied.

In Proposition Two, Appellant argues the admission of irrelevant or unfairly prejudicial data from his cell phone and related testimony, reflecting his relationships with various women and lewd comments about them, was unfairly prejudicial and requires reversal. Appellant objected to this evidence and preserved the question for review. We therefore assess the admission of the evidence for abuse of discretion, which we have defined as a clearly erroneous conclusion and judgment, contrary to logic and effect of the facts presented. *Hancock v. State*, 2007 OK CR 9, ¶ 72, 155 P.3d 796, 813; *C.L.F. v. State*, 1999 OK CR 12, ¶ 5, 989 P.2d 945, 946. We find no abuse of discretion in the admission of this evidence, which helped explain relevant data from the cell phone; and further find that the evidence

was insufficiently prejudicial to unfairly impact either the conviction or sentence. Proposition Two is therefore denied.

In Proposition Three, Appellant argues he was deprived of constitutionally effective assistance by trial counsel's failure to object to evidence admitted in violation of *Miranda,* and the admission of testimony related to his cell phone data. Reviewing these claims under the deficient performance and prejudice analysis of *Strickland v. Washington,* 466 U.S. 668 (1984), no relief is warranted. The evidence tainted by a *Miranda* violation led only to harmless error; and neither an error, nor resulting prejudice, is shown by the admission of the cell phone evidence. This precludes relief under *Strickland's* prejudice prong. *Phillips v. State,* 1999 OK CR 38, ¶ ¶ 103-104, 989 P.2d 1017 1043-44. Proposition Three is without merit.

In Propositions Four and Five, Appellant argues that the trial court erred in awarding $7,504.00 in restitution and assessing a $1,500.00 indigent defense fee. We review these claims only for plain error, as defined above. The State candidly concedes plain error occurred in both instances. Restitution in a criminal case is authorized in an amount "up to three times the amount of the

economic loss suffered as a direct result of the criminal act of the defendant." 22 O.S.2011, § 991f(A)(1). The actual loss must be determinable by the court with reasonable certainty. *Honeycutt v. State,* 1992 OK CR 36, ¶ 31, 834 P.2d 993, 1000. The parties agree that the court did not follow the statutory procedure, and the record contains scant evidentiary support for the current amount, though this amount or even more could prove correct.

We will vacate the award of $7,504.00 and remand to the trial court with instructions to determine an amount of restitution, either by agreement or according to the procedures set forth in 22 O.S.2011, § 991f. The indigent defense fee of $1,500.00 will also be vacated and remanded with instructions to impose the specific $1,000.00 amount required by statute, "unless another amount is specifically requested by counsel for the indigent person and is approved by the court." See 22 O.S.2011, § 1355.14(A)(4).

In Proposition Six, Appellant argues that the trial court erred in its assessment of $520.00 in juror fees, calculated as the sum of the $20.00 daily cost of the thirteen trial jurors for two days of trial. Appellant concedes the lack of an objection waived all but plain or

obvious error. Finding no plain or obvious error under current law, we decline to vacate this portion of the trial court's order. Proposition Six is denied.

Appellant seeks relief in Proposition Seven based on the cumulative prejudicial effect of the errors. We found error in the admission of evidence tainted by a *Miranda* violation, but determined this error was harmless. We have remedied errors in the restitution order and indigent defense assessment by vacating and remanding for further proceedings. We find no other harmful errors, and no accumulation of unfairly prejudicial effects from individually harmless errors. Proposition Seven is denied.

DECISION

The judgment of conviction and sentence of twenty-five years imprisonment is **AFFIRMED**. The award of restitution and the assessment of indigent defense fees are **VACATED** and **REMANDED** with instructions. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2021), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

APPEAL FROM THE DISTRICT COURT OF COMANCHE COUNTY
THE HONORABLE SCOTT D. MEADERS, DISTRICT JUDGE

APPEARANCES AT TRIAL	**APPEARANCES ON APPEAL**
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OPINION BY: LEWIS, J.
KUEHN, P.J.: Concur
ROWLAND, V.P.J.: Concur in Part and Dissent in Part
LUMPKIN, J.: Concur in Part and Dissent in Part
HUDSON, J.: Concur in Part and Dissent in Part

ROWLAND, VICE-PRESIDING JUDGE, CONCURRING IN PART AND DISSENTING IN PART:

I concur in affirming Collins's Judgment and Sentence, but dissent from the holding that detectives violated his constitutional rights during questioning. *Slip op.* at 3. The majority finds that Collins's statement to take him "back downstairs" during interrogation was an invocation of his right to remain silent, and that all statements made after his request to return to his cell were obtained in violation of *Miranda v. Arizona,* 384 U.S. 436 (1966).

Like the corollary right to counsel, one's right to remain silent under *Miranda* can be invoked only by a clear and unambiguous request to remain silent. *Berghuis v. Thompkins*, 560 U.S. 370 (2010).

> There is good reason to require an accused who wants to invoke his or her right to remain silent to do so unambiguously. A requirement of an unambiguous invocation of *Miranda* rights results in an objective inquiry that "avoid[s] difficulties of proof and ... provide[s] guidance to officers" on how to proceed in the face of ambiguity. If an ambiguous act, omission, or statement could require police to end the interrogation, police would be required to make difficult decisions about an accused's unclear intent and face the consequence of suppression "if they guess wrong."

Berghuis, 560 U.S. at 381–82 (citations omitted).

No magic words are required to invoke one's right to remain silent. The suspect's words must be considered in context and courts

must examine all attendant circumstances of the encounter to determine whether a reasonable officer should have understood clearly that the defendant wished to make no further statement.

In my view, the videotape of this interview does not depict a man making an unambiguous request to remain silent. Indeed, from almost the very beginning of the questioning, Collins is highly animated and boisterous, responding to nearly every question loudly and aggressively, and often volunteering much more than the question called for. He appears to become louder and more animated when he perceives the questions are challenging his version of the facts, or seeking to clarify apparent inconsistencies in his version of events. At various points he stands, waives his hands in the air, and turns around in apparent exasperation at the questions. At about twenty minutes into the interview, while the two detectives are trying to pin him down about who he is referring to by the pronoun "she," he loudly, and with great irritation, slowly emphasizes the names of two females he has already stated were at the crime scene. The following exchange then takes place:

Collins: "Man, can I go back downstairs, please, 'cause ya'll making things awkward for me."

Interviewer No. 1:	“Awkward for you?” “What’s awkward for you?”
Collins:	“Yeah”
Interviewer No. 2:	“We’re just asking some simple questions.”
Collins:	“Okay.”
Interviewer No. 1:	“All you gotta do is tell us the truth.”
Collins:	“I did, I am telling the truth.”

The three parties to this conversation are talking over one another at times during this exchange, after which Collins folds his arms, continues to look perturbed, but continues answering questions.

Printed on paper with no context, the words, “can I go back downstairs, please,” could appear to be a clear statement of Collins’s desire to end the interview, but the video recording underscores the importance of examining such police interrogations in context. Imagine a hypothetical with a married couple arguing intently while driving in a vehicle miles from their home. After repeatedly expressing exasperation that the driver wasn’t listening, the passenger exclaims, “Pull this car over here and let me out!” It is at least possible, and I would say probable, that the passenger does not really wish to walk the rest of the way home, but is instead using this as a rhetorical device. At the very least there is some ambiguity, and

I see the same ambiguity in Collins's actions in the context of his interrogation. To require the detectives to have essentially interrupted him in the middle of his rant, and end the interview based on his complaint that he felt awkward and wanted to leave, would have required the detectives to engage in exactly the sort of guessing warned of in *Berghuis.* Collins's statement, in my opinion, does not constitute a clear and unambiguous request to invoke his constitutional right to remain silent and I cannot agree with the analysis in Proposition 1.

LUMPKIN, JUDGE: CONCUR IN PART/DISSENT IN PART:

I concur in upholding the Judgment and Sentence in this case. However, I dissent to the finding of a harmless *Miranda* violation in the first proposition. I find there was no *Miranda* violation and therefore, no error.

The Supreme Court has made it clear that an invocation of the right to remain silent must be unambiguous and unequivocal. *See Berghuis v. Thompkins*, 560 U.S. 370, 382 (2010) ("[h]ad [the defendant] made either of these unambiguous statements [I want to remain silent or I do not want to talk to you] he would have invoked his right to cut off questioning." Since "he did neither . . . he did not invoke his right to remain silent." *Id.*

In this case, Appellant's request to go downstairs because police were making things awkward for him was not an unambiguous, unequivocal invocation of his right to remain silent. Such a request is open to interpretation, as shown in the State's brief. The State posits that Appellant was concerned about the manner of the interview, not that he no longer wanted to talk to police. This is reasonable in light of the problems the detectives had in

understanding what Appellant was telling them. The State references the video interview the detectives conducted with Appellant, admitted at trial as State's Exhibit 57. Appellant used pronouns instead of proper names and when the detectives asked him to clarify, Appellant expressed exasperation with their inability to comprehend his narrative. After making the subject request, one of the detectives sought clarification and asked, "[w]hat do you mean awkward for you?" Thereafter, Appellant did not clarify, but continued speaking with the detectives.

In light of this record, Appellant's request was not an invocation of his right to remain silent. Thus, there was no error.

I am authorized to state that Judge Hudson joins in this writing.