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## COURT FAULTS DETENTION, REVERSES MURDER CONVICTION

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The 1st District Appellate Court on Friday tossed out -- at least for now -- the murder conviction of a man accused of shooting a friend and fellow gang member, finding that the defendant was illegally detained.

After a bench trial before Cook County Associate Judge Dennis A. Dernbach, Paul Salgado was convicted of first-degree murder and sentenced to 55 years in prison.

According to the appeals court, Salgado was found guilty in the Jan. 28, 2000, shooting death of Julio Rodarte. Salgado, Rodarte and Francisco Navarro were all members of the Two-Sixers gang who had been driving around that day, sharing drugs and alcohol, the court said. The motive for the shooting was unclear.

Among his contentions on appeal, Salgado argued that he was detained without probable cause. The appeals court agreed in a 52-page order written by Justice Margaret J. O'Mara Frossard.

The appeals court remanded Salgado's case for a hearing on whether his subsequent confession to the murder was sufficiently attenuated from his illegal arrest to be admissible. If so, the trial court is to reinstate the conviction and sentence. If not, the confession is to be suppressed. Either way, sufficient evidence exists for Salgado to be retried, the court said.

According to the order, police arrived at Salgado's home at 9:30 p.m. on Feb. 3, 2000, and asked him to accompany them to the Area 1 police station. The detectives did not have a warrant, but said they wanted to talk with Salgado about Rodarte's murder.

At a hearing on Salgado's motion to quash arrest, which was recounted in the order, Detective John Zalatoris testified that Salgado voluntarily went to the station. Salgado said he had no choice and that police handcuffed him, which Zalatoris denied.

Prosecutors argued the encounter with police remained voluntary until five hours later when Navarro implicated Salgado in the shooting. That gave police probable cause to arrest Salgado, prosecutors said.

Salgado was officially arrested at 9 a.m. on Feb. 4, 2000, when Zalatoris took him into custody on the basis of Navarro's statement.

The trial court denied Salgado's motion to quash arrest, finding that by 2 a.m., when probable cause arose, Salgado had been in the station for a short time, the order said.

Salgado argued on appeal that if there was a voluntary encounter with police, it escalated into an illegal arrest. In support of his argument, he relied on [People v. Ollie, 333 Ill.App.3d 971 \(2002\)](#).

In Ollie, the 1st District found that "voluntary presence at the police station in order to assist with an investigation may progress into unlawful detention with the passage of time."

The defendant in Ollie voluntarily accompanied police to the station for questioning about a murder. After he denied involvement, police returned the defendant to an interview room, but did not tell him he was free to go.

The appeals court found the defendant in Ollie was in custody at that point and vacated his murder conviction. The state, according to the order, argued that Ollie was distinguishable because in that case the defendant was held for 16 hours before the court found he was under arrest. In Salgado's case, he was at the station for five hours before probable cause arose.

But the appeals court found the time argument was not persuasive because the court in Ollie looked at the totality of circumstances.

In this case, Frossard wrote, after Salgado denied involvement, detectives put him in a interview room with a door that may or may not have been locked. They did not tell him he was free to go. Citing [People v. Barlow, 273 Ill.App.3d 943, 950 \(1995\)](#) she wrote, "Illinois courts have repeatedly rejected the proposition that an individual who voluntarily accompanies police to the station for questioning 'implicitly consents to remain in the police station while the police investigate the crime to obtain probable cause for the interviewee's arrest.' "

As such, the appeals court found Salgado's voluntary presence at the police station ended around midnight, after he denied involvement in the murder.

"It defies common sense and everyday experience to believe that individuals would agree to voluntarily spend extended periods of time at police stations in small windowless rooms with the doors shut, waiting for police to conduct criminal investigations," Frossard wrote.

The appeals court found that it did not have a sufficient record to determine whether Salgado's videotaped confession, given on Feb. 5, 2000, was sufficiently attenuated from the illegal arrest to be admissible. But it rejected claims from Salgado that his incriminating statements should be suppressed because he had earlier invoked his right to counsel.

The appeals court found Salgado reinitiated the conversation with police, and as such waived his right to counsel.

Justices Sheila M. O'Brien and P. Scott Neville Jr. concurred in the order, which was unpublished in accordance with [Illinois Supreme Court Rule 23](#).

James E. Fitzgerald, supervisor of the Criminal Appeals Division for the Cook County state's attorney's office, said prosecutors would file a petition for leave to appeal with the Illinois Supreme Court.

The state was represented on appeal by Fitzgerald's predecessor, Renee G. Goldfarb, Kathryn A. Schierl, Janet Powers Doyle and C. Thor Martin.

Salgado was represented by Chicago attorney **Marc W. Martin**. Martin said he was pleased the appeals court ordered an attenuation hearing.

The case is People v. Paul Salgado, No. 1-03-1753.

---- INDEX REFERENCES ---

NEWS SUBJECT: (Social Issues (1SO05); Violent Crime (1VI27); Criminal Law (1CR79); Legal (1LE33); Crime (1CR87); Judicial (1JU36))

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