UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

ETHAN JOHNSON SPRUILL, Petitioner - Appellant, v. JEROLD BRAGGS, JR., Warden, Respondent - Appellee.	No. 20-6009 (D.C. No. 5:19-CV-00442-D) (W.D. Oklahoma)

ORDER AND JUDGMENT*

(Filed Oct. 1, 2020)

Before **PHILLIPS**, **MURPHY**, and **McHUGH**, Circuit Judges.

Petitioner Ethan Johnson Spruill, a prisoner in Oklahoma state custody proceeding with the assistance of counsel, sought a Certificate of Appealability ("COA") to challenge the district court's denial of his 28 U.S.C. § 2254 petition for a writ of habeas corpus. On

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* This order and judgment is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

June 17, 2020, we granted a COA as to one of the three claims Mr. Spruill asserted in the petition—a Fifth Amendment self-incrimination claims but[1]—we denied the request as to the remaining two claims We now affirm the district court's denial of his self-incrimination claim.

I. BACKGROUND

A. Factual Background

In January of 2014, Mr. Spruill moved into an apartment building in Norman, Oklahoma, in a unit directly above that of Aaron McCray, Mr. McCray's fiancée, Stephanie Grantham, and their two children. During the next month, Mr. Spruill learned that Ms. Grantham and Mr. McCray had complained of noise emanating from his apartment, leading to a conversation in which Mr. Spruill asked the couple to contact him directly about future noise complaints.

On February 15, 2014, Mr. Spruill returned to his apartment after a day of drinking After smoking marijuana in his apartment, he joined a group of people socializing outside his apartment. Ms. Grantham approached and complained that Mr. Spruill had awoken her children by stomping on his apartment floor (Ms. Grantham's ceiling). Mr. Spruill angrily denied having stomped on the floor, told Ms. Grantham that he could

[1] The Fifth Amendment's privilege against self-incrimination is applicable to the states through the Fourteenth Amendment's Due Process Clause. *See Malloy v. Hogan*, 378 U.S. 1, 6 (1964).

hear her yelling at her children every night, and accused her of abusing her children.

Later, Mr. Spruill went downstairs to confront the couple, carrying, as he always did, a revolver on his hip pursuant to a concealed carry permit. Mr. Spruill knocked on the door and, when the couple did not immediately admit him, Mr. Spruill again accused them of abusing their children, called them cowards, and remarked, "It's not like I'm going to shoot you, or am I?" App., Vol. I at 52.

Mr. McCray ultimately opened the door, but what happened next was the subject of divergent testimony at trial. According to Mr. Spruill, Mr. McCray grabbed him around the neck, pulled him into the apartment, threw him on the floor between two chairs, and Mr. McCray used the weight of his body to restrain Mr. Spruill while simultaneously choking him. According to Ms. Grantham, Mr. Spruill stumbled into the apartment, at which point Mr. McCray asked him to leave and tried to push him out the door. Ms. Grantham further testified that only after Mr. Spruill refused to leave did the two begin fighting on the floor.

At some point during the tussle, Mr. Spruill became convinced that Mr. McCray would kill him from the continued choking. He unholstered his revolver and shot Mr. McCray in the chest several times, killing Mr. McCray. Mr. Spruill returned to his apartment, and, when the police arrived, he surrendered without incident and immediately requested an attorney.

Officer Deny Oesterling transported Mr. Spruill to the police station and escorted him to the station's interrogation room. At Mr. Spruill's request, Officer Oesterling remained with Mr. Spruill in the interrogation room while waiting for the assigned detectives. Officer Oesterling testified that during the drive to the station and while the pair sat together in the interrogation room, Mr. Spruill offered several unprompted comments about the shooting, some of which were captured in a recording initiated surreptitiously by Officer Oesterling.

An hour later, Detectives Corey Lambrecht and Derek Hopkins turned on the interrogation room's videotape recorder and entered the room, relieving Officer Oesterling. Mr. Spruill conversed with Detectives Lambrecht and Hopkins for about twenty minutes, during which time he made some inculpatory statements. The following exchange then occurred between Detective Lambrecht and Mr. Spruill; it is quoted at length, as it is a focal point of the instant appeal:

> 1:12:00: Spruill: I'm hanging out with Elizabeth. I'm hanging out with Roger and their son David. I say David, you know . . . Roger lives there but don't even smoke pot. I say David you know he's what 18 years old I'm like (makes smoking gesture) "smoke a little dope?" you know what I mean that's . . . that's what I'm guilty of but I'll be the first one to say hey how'd we catch Al Capone after we went you know wet again we caught him by tax evasion. Pot there ain't nothing wrong

with it and you both know it. And I know you know it. Ummmm (laughs) I just happened to be drunk and uhhh I heard what I hear every goddamn night and I was drunk and as we all know a drunk man's words are a sober man's thoughts. So, I went down there. And I was out of line. And I was meeted with (points at neck) that . . . and this (points at arms) . . . marks. He grabbed me and was just attacked me. Threw me on the ground. But he had me by the throat and I'm thinking (makes choking noises). Alright and (laughs) and like I'm such a pussy, like you know that's . . . that's being a drunk. You knock on looking for trouble the next thing and you're like alright, woof, hands up, I'm sorry bro, I didn't mean to. He didn't stop. Well, I'm a law abiding citizen, I have a permit to carry a piece. I'm being attacked and it was just as easy as that . . . as you know Detective Lambrecht. (Makes gesture as if he's holding a gun and pulling the trigger) Goo, goo, goo, goo. (shrugs) That's all I gotta say.

1:13:33: Lambrecht: Ethan, ummm, first of all, I appreciate you talking and explaining what happened. I'm glad you gave your side of the story. I'd love to ask you some more details about this.

1:13:44: Spruill: Ask me right now! You're just gonna throw me in a cell?

1:13:48: Lambrecht: Do what?

1:13:49: Spruill: You're just gonna throw me in a cell?

1:13:50: Lambrecht: Heck no! No. I got all night. Ummm . . . because the officers brought you here . . . uhhh . . . you're in custody, you're in investigative detention.

1:13:58: Spruill: That's alright[.]

1:13:59: Lambrecht: You need to understand your *Miranda* rights before I can ask you some detailed questions.

1:14:01: Spruill: Can I? Ok well see . . . I've trusted. . . . I've given y'all enough benefit of the doubt. And I've[.] But since the beginning I've said where's Frank Corbois? I need my lawyer here. But I've I've understand . . . and I've said . . . I respect y'all and I'll tell you anything, but you're right tell me . . . how you . . . ughhh . . . I'm a smart kid, I'm an honor student, I'm an . . . uhhh you flicking know what I mean, a ughh. . . .

1:14:24: Lambrecht: You sound very smart. No, I I . . . uhh . . . you're very intelligent and I appreciate (Spruill begins speaking at this point 1:14:27) . . . everything you've said.

1:14:27 Spruill (talking at the same time as Lambrecht): I understand *Miranda* Rights . . . I just

1:14:30: Lambrecht: And I'm not . . . you know first of all, this is the first I've heard of you asking for a lawyer just to be clear.

1:14:34: Spruill: Oh no no, because this is the first I've talked to you. I've been talking to other people all night long. Yeah.

1:14:38: Lambrecht: Did you? Ok. Well . . . but nobody's sat you down and asked you questions?

1:14:42: Spruill: No, and I just happened to take to Deny. And Deny I said Deny stay with me tonight. Deny, I trust you. I know that you work for the man, which you all do and I've got friends who come in the meat market who are homicide detectives in Oklahoma City, but I looked at Deny and I saw his eyes man, you're alright, stay with me, please like, I don't know y'all and for all . . . and and I've dealt with enough cops to know that it doesn't matter how real and how compliant you are all you care about . . . throw his ass in jail, he flicking shot somebody, it doesn't matter like that's what I know you guys as.

1:15:17: Lambrecht: If that were the case, you'd already be booked in. I definitely want to get more . . . a few more details from you[.]

1:15:23: Spruill: Ask me. Ask me, please.

1:15:24: Lambrecht: Well, by law and I respect you and I respect your (can't hear this part because Spruill talks at same time)

1:15:26 Spruill: (Talking at same time as Lambrecht) I need a lawyer

1:15:28 Lambrecht: Well no, no. You have the right to refuse a lawyer and waive your *Miranda* Rights.

1:15:33: Spruill: I ain't gonna do that. I ain't gonna do that. That's fine. No, no, no. I

know you're not pushing me. And no, I know. No.

1:15:39: Lambrecht: The . . . I can't ask you questions unless you waive your *Miranda* Rights.

1 1:15:43: Spruill: So I got . . . I gotta have a law . . . ok, that's fine then I'm alright. Then so. . . .

1:15:46: Lambrecht: I'm not gonna sit here and ask you questions. I mean you said this is . . . you're . . . you're . . . you know . . . you're saying this is self-defense, etc. and if that's the case there's definitely a lot of questions I need to ask you (Ethan interrupts)

1:15:53: Spruill: Well well, no no, he. . . . yeah

1:15:55: Lambrecht: but But if you don't want me to ask you the questions, I won't. I mean

1:15:59: Spruill: Well see here's the thing. Can . . . can you just be straight up with me without me signing a piece of paper?

1:16:04: Lambrecht: Well, no no, I need you to make sure that you're aware of your *Miranda* Rights[.]

1:16:07: Spruill: Oh, I'm aware. Yeah, you have a right to remain silent. You know what I mean? I understand all that[.]

> 1:16:10: Lambrecht: I totally get it, but here I need you, under the circumstances I need you to sign that you're aware of it[.]
>
> 1:16:16: Spruill: (drinking coffee) Mmmhmmm
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> 1:16:18: Lambrecht: Cause if it were me, I mean, if I uhhhh had shot somebody and I'm claiming self-defense . . . again I wasn't there I'm just trying to interview everyone to figure out what happened. You know if it were me and it was truly 100% self-defense, I'd . . . I'd be wanting to talk to everyone (Can't hear the rest because Spruill begins to speak)
>
> 1:16:30: Spruill: Officer, if it was truly self-defense, it would have been him banging on my door. That's where I flicked up. Is that I went looking for them. [. . .]

App., Vol. I at 127-29 (ellipses in original).

B. Procedural History

The State ultimately charged Mr. Spruill with first-degree murder. The trial court denied Mr. Spruill's motion to suppress the recordings documenting his custodial statements, and the recordings were presented at trial.

The jury rejected Mr. Spruill's self-defense theory, but declined to convict him of first-degree murder, instead finding he committed the lesser-included offense of first-degree manslaughter. The jury recommended a 23-year sentence, which the trial court imposed. Mr. Spruill appealed.

1. OCCA's Decision to Admit Mr. Spruill's Statements

On direct appeal to the Oklahoma Court of Criminal Appeals ("OCCA"), Mr. Spruill raised three constitutional challenges to the validity of his conviction, including a claim that he was deprived of his privilege against self-incrimination by the admission at trial of custodial statements made in response to police interrogation. By summary opinion, the OCCA rejected each challenge and affirmed his conviction.

The OCCA reasoned, in relevant part, as follows:

> The trial court did not abuse its discretion in denying the motion to suppress [Mr. Spruill's] statements. *Johnson v. State*, 2012 OK CR 5, ¶ 11, 272 P.3d 720, 726 (reciting standard of review for motion to suppress); *Mitchell v. State*, 2011 OK CR 26, ¶ 13, 270 P.3d 160, 169 (same). "The Fifth Amendment right [to counsel] arises when one who is in custody is interrogated." *Taylor v. State*, 2018 OK CR 6, ¶ 6, P.3d (citing *Miranda v. Arizona*, 384 U.S. 436, 469-70, 86 S. Ct. 1602, 1625-26, 16 L. Ed. 2d 694 (1966)). "Under *Miranda*, no statement obtained through custodial interrogation may be used against a defendant without a knowing and voluntary waiver of those rights." *Taylor*, 2018 OK CR 6, ¶ 6 (citing *Miranda*, 384 U.S. at 444, 86 S. Ct. at 1612).
>
> The record shows that [Mr. Spruill] was in custody at the time of his various recorded

statements; that [Mr. Spruill] requested the presence of counsel repeatedly starting at the moment he was arrested in front of his apartment; that [Mr. Spruill's] statements were unwarned-that is, authorities never read him the warning mandated by *Miranda*, 384 U.S. at 479, 86 S. Ct. at 1630; and that [Mr. Spruill] refused to sign any waiver indicating that he understood his rights. However, the record also shows that [Mr. Spruill's] statements were not made in response to interrogation from authorities. *See Rhode Island v. Innis*, 446 U.S. 291, 300-01, 100 S. Ct. 1682, 1689-90, 64 L. Ed. 2d 297 (1980) (the term "interrogation" for *Miranda* purposes "refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect."). Rather, [Mr. Spruill's] statements were volunteered to virtually anyone who would listen while he was at the police department. Volunteered statements of any kind are not barred by the Fifth Amendment. *Miranda*, 384 U.S. at 478.

"Once a suspect in custody has asserted his right to speak only through counsel, all attempts at interrogation must cease. A suspect can, however, change his mind and decide to speak to police without counsel." *Underwood v. State*, 2011 OK CR 12, ¶ 31, 252 P.3d 221, 238 (internal citation omitted). Here, the State met its burden to prove that [Mr.

> Spruill's] statements were the product of an essentially free and unconstrained choice by [Mr. Spruill]. *Id.*, 2011 OK CR 12, ¶ 33, 252 P.3d at 238. There is no constitutional prohibition to admission of these statements at trial despite [Mr. Spruill's] requests for counsel, *see Frederick v. State*, 2001 OK CR 34, TR 92-93, 37 P.3d 908, 934, or his intoxication. *Coddington v. State*, 2006 OK CR 34, ¶ 38, 142 P.3d 437, 448. [Mr. Spruill's] argument that he was uninformed of his rights and fearful of the authorities when he made these statements is also not supported by the record.

App. Vol. I, at 86-88.

2. District Court's Decision

Less than a year later, Mr. Spruill filed the instant habeas petition in federal district court, raising the same three constitutional challenges rejected by the OCCA. The district court denied relief on all three claims, and further declined to grant Mr. Spruill a COA. Regarding the self-incrimination claim, the district court reasoned as follows:

> After careful consideration of the record, the Court finds that [Mr. Spruill] has failed to overcome the presumption of correctness of the OCCA's findings. [Mr. Spruill] concedes "there were some volunteered statements," and argues in a conclusory manner "there were numerous incriminating statements that were obtained over objection, contrary to

> Supreme Court precedents." [Mr. Spruill] does not point to clear and convincing evidence that any particular statement was not volunteered or any particular request for counsel was not abandoned. [Mr. Spruill] instead contends the police officers "strategically engaged in conduct specifically designed to cause [him] to make incriminating statements in their presence" and this "calculated scheme . . . [was] the functional equivalent of questioning" as defined by the Supreme Court in *Innis*. However, the OCCA unequivocally rejected [Mr. Spruill's] view of the evidence; the OCCA expressly found that his incriminating statements "were not made in response to interrogation" and, in so doing, specifically referenced *Innis* and its definition of "the term 'interrogation' for *Miranda* purposes." The Court finds that [Mr. Spruill] has failed to show that the OCCA made an unreasonable determination of the facts when it found that [Mr. Spruill] volunteered his incriminating statements.

App. Vol. I, at 74-75 (citations omitted) (ellipsis in original).

3. This Court's COA Decision

Mr. Spruill timely sought a COA from this court, which we granted as to Mr. Spruill's Fifth Amendment self-incrimination claim and denied as to his other two claims. We ordered briefing addressing the merits of

self-incrimination claim, and we now resolve the claim on its merits.

II. STANDARD OF REVIEW

Mr. Spruill raised his first self-incrimination claim on direct appeal, and the OCCA denied the claim on its merits. Under the Antiterrorism and Effective Death Penalty Act ("AEDPA"), a petition for writ of habeas corpus will not be granted with respect to any claim that was adjudicated on the merits in state court unless the adjudication of the claim:

> (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
>
> (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

28 U.S.C. § 2254(d)(1)–(2).

"A state-court decision that correctly identifies the governing legal rule but applies it unreasonably to the facts of a particular prisoner's case certainly would qualify as a decision 'involv[ing] an unreasonable application of . . . clearly established Federal law.'" *Williams v. Taylor*, 529 U.S. 362, 407-08 (2000) (alterations in original) (quoting 28 U.S.C. § 2254(d)(1)). The inquiry is "whether the state court's application of clearly established federal law was objectively

unreasonable." *Id.* at 409. "For purposes of § 2254(d)(1), 'an *unreasonable* application of federal law is different from an *incorrect* application of federal law.'" *Harrington v. Richter*, 562 U.S. 86, 101 (2011) (quoting *Williams*, 529 U.S. at 410); *see also White v. Woodall*, 572 U.S. 415, 419 (2014) ("[C]learly established federal law for purposes of § 2254(d)(1) includes only the holdings, as opposed to the dicta, of th[e Supreme] Court's decisions. And an unreasonable application of those holdings must be objectively unreasonable, not merely wrong; even clear error will not suffice." (alterations in original) (internal citations and quotation marks omitted)).

The standard set by AEDPA was designed to be "difficult to meet." *Richter*, 562 U.S. at 102.

> As amended by AEDPA, § 2254(d) stops short of imposing a complete bar on federal-court relitigation of claims already rejected in state proceedings. It preserves authority to issue the writ in cases where there is no possibility fairminded jurists could disagree that the state court's decision conflicts with this Court's precedents. It goes no further. Section 2254(d) reflects the view that habeas corpus is a guard against extreme malfunctions in the state criminal justice systems, not a substitute for ordinary error correction through appeal. As a condition for obtaining habeas corpus from a federal court, a state prisoner must show that the state court's ruling on the claim being presented in federal court was so lacking in justification that there was an error

> well understood and comprehended in existing law beyond any possibility for fairminded disagreement.

Id. at 102-03 (citations and parentheticals omitted); *see also Burt v. Titlow*, 571 U.S. 12, 20 (2013) ("We will not lightly conclude that a State's criminal justice system has experienced the 'extreme malfunction[]' for which federal habeas relief is the remedy." (quoting *Richter*, 462 U.S. at 102)).

A state court's "factual determinations are presumed correct absent clear and convincing evidence to the contrary." *Howell v. Trammell*, 728 F.3d 1202, 1228 (10th Cir. 2013) (citing 28 U.S.C. § 2254(e)(1)); *see also Wood v. Allen*, 558 U.S. 290, 301 (2010) ("[A] state-court factual determination is not unreasonable merely because the federal habeas court would have reached a different conclusion in the first instance.").

III. ANALYSIS

Mr. Spruill argues that both 28 U.S.C. § 2254(d)(1) and (d)(2) are implicated by the OCCA's decision to admit inculpatory statements he made while in police custody. First, he asserts that he is entitled to relief under 28 U.S.C. § 2254(d)(1) chiefly because the OCCA unreasonably applied the Supreme Court's decision in *Rhode Island v. Innis*, 446 U.S. 291 (1980). Second, he argues that he is entitled to relief under 28 U.S.C. § 2254(d)(2) because the OCCA's decision was based on an unreasonable determination of the facts in light of the evidence presented at trial. Specifically, Mr. Spruill

states the evidence showed that although he repeatedly requested counsel, he was never given *Miranda* warnings nor provided with counsel before being interrogated.[2]

In support of his argument, Mr. Spruill highlights the following language in *Innis*:

> [T]he *Miranda* safeguards come into play whenever a person in custody is subjected to either express questioning or its functional equivalent. That is to say, the term 'interrogation' under *Miranda* refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect.

Innis, 446 U.S. at 300-01 (footnotes omitted).

The relevant facts in *Innis* were as follows. A taxicab driver who had been robbed by a man wielding a sawed-off shotgun identified a picture of Mr. Innis as that of his assailant. *Id.* at 293. A police officer spotted Mr. Innis, who was unarmed, arrested him, and advised him of his *Miranda* rights. *Id.* at 293-94. When

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[2] Although Mr. Spruill suggests his latter argument falls under 28 U.S.C. § 2254(d)(2), rather than (d)(1), he does not dispute the factual findings in his case. To the extent Mr. Spruill argues that the police officers' statements and conduct constituted an "interrogation," his objection to the OCCA's decision is not a factual one but rather an objection to the application of law to the facts in his case.

other officers arrived at the arrest scene, Mr. Innis was twice again provided with *Miranda* warnings, after which he told officers that he wished to speak with a lawyer. *Id.* at 294. Mr. Innis was then placed in a police vehicle with three officers and driven to the police station. *Id.* While en route to the station, two of the officers engaged in a conversation between themselves concerning the missing shotgun. *Id.* at 294-95. One of the officers stated that there were "a lot of handicapped children running around in this area," and "God forbid one of them might find a weapon with shells and they might hurt themselves." *Id.* Mr. Innis interrupted the conversation, stating that the officers should turn the police car around so he could show them where the gun was located. *Id.* at 295. Upon returning to the scene of the arrest, where a search for the shotgun was in progress, Mr. Innis was again advised of his *Miranda* rights. *Id.* He replied that he understood those rights but stated that he "wanted to get the gun out of the way because of the kids in the area," and he then led the police to the shotgun. *Id.*

The Supreme Court held that Mr. Innis was not interrogated, within the meaning of *Miranda*. *Id.* at 302. The Court first noted that "the special procedural safeguards outlined in *Miranda* are required not where a suspect is simply taken into custody, but rather where a suspect in custody is subjected to interrogation." *Id.* at 300. It went on to define "interrogation" using the language quoted *supra*. Applying that definition to the facts before it, the Court held that "[i]t cannot be said . . . that [the officers] should have known

that their conversation was reasonably likely to elicit an incriminating response" from Mr. Innis. *Id.* at 302. It reasoned that there was "nothing in the record to suggest that the officers were aware that [Mr. Innis] was peculiarly susceptible to an appeal to his conscience concerning the safety of handicapped children," nor to suggest that the police knew that he was "unusually disoriented or upset at the time of his arrest." *Id.* at 302-03. The Court further contrasted the officers' conversation, which consisted of "no more than a few off hand remarks," with a "lengthy harangue in the presence of the suspect." *Id.* at 303. Finally, the Court rejected Mr. Innis's contention that, under the circumstances, the officers' comments were "particularly evocative." *Id.* (internal quotation marks omitted). Although the Court acknowledged that Mr. Innis was "subjected to subtle compulsion," it concluded that this compulsion could not be equated to interrogation—it was neither express questioning nor its "functional equivalent." *Id.* at 300-03.

Here, Mr. Spruill argues that Detective Lambrecht's "infamous statement"—"if it were me and I'd shot someone claiming to be self-defense, . . . I'd be wanting to talk to everyone"—constituted interrogation after Mr. Spruill had requested counsel and had not waived his right thereto. Aplt. Reply Br. at 7 (quoting App. Vol. I, at 129). He further points out that "[c]ontrary to the facts in [his] case, Mr. Innis was given his full *Miranda* warnings four (4) times" before making inculpatory statements; Mr. Spruill "was never given *Miranda* warnings." Aplt. Br. at 17-18.

Although we found that Mr. Spruill's self-incrimination claim was "debatable" for COA purposes,[3] we cannot conclude that he is entitled to relief under the highly deferential standard we must apply to the state court's adjudication on the merits of his claim. The OCCA correctly identified the governing legal rules. Specifically, it noted that under *Miranda* and its progeny, no statement obtained through custodial interrogation may be used against a defendant without a knowing and voluntary waiver of those rights; an "interrogation" for *Miranda* purposes refers not only to express questioning by police, but also to other words and actions that are reasonably likely to elicit an incriminating response; and (3) once a suspect in custody has asserted his right to speak only through counsel, all attempts at interrogation must cease. Based on its review of the record, the OCCA concluded that Mr. Spruill's custodial statements "were not made in response to interrogation," thereby removing them from the Fifth Amendment's protective ambit. App. Vol. I, at 87. Rather, his "statements were volunteered to virtually anyone who would listen while he was at the police department." *Id.* It accordingly affirmed the trial

[3] As noted in our previous decision, under AEDPA, a COA may issue if a petitioner "demonstrate[s] that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Miller-El v. Cockrell*, 537 U.S. 322, 338 (2003) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)). A "claim can be debatable [for COA purposes] even though every jurist of reason might agree, after the COA has been granted and the case has received full consideration, that petitioner will not prevail." *Buck v. Davis*, 137 S. Ct. 759, 774 (2017) (quoting *Miller-El*, 537 U.S. at 338).

court's denial of Mr. Spruill's motion to suppress these statements.

This ruling was not "so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." *Richter*, 562 U.S. at 103. The record confirms that Mr. Spruill was talkative with the officers, especially in conversations with Officer Oesterling, whom Mr. Spruill repeatedly asked to remain with him in the interrogation room. In response to Detective Lambrecht's question whether any officer had "sat you down and asked you questions," Mr. Spruill responded "No, and I just happened to take to Deny [*i.e.*, Officer Oesterling]. And . . . I said Deny stay with me tonight." App. Vol. I, at 128. Mr. Spruill was also loquacious with Mr. Lambrecht, at one point speaking to him in a seeming stream of conscious for over a minute and a half, with his statements flowing uninterrupted from an admission to smoking marijuana earlier in the evening, to commentary on how Al Capone was apprehended, to a description of the altercation between himself and Mr. McCray. *Id.* at 127.

Regarding Detective Lambrecht's statement that if he were "claiming self-defense . . . [he'd] be wanting to talk to everyone," App. Vol. I, at 129, there is a possibility for fairminded disagreement as to whether Mr. Lambrecht should have known that this comment was "reasonably likely to elicit an incriminating response" from Mr. Spruill, under the circumstances of this case. *Innis*, 446 U.S. at 301. Mr. Lambrecht's comment could be construed—and apparently was

construed, by the OCCA—as more analogous to an "off hand remark[]" constituting "subtle compulsion," than to "express questioning or its functional equivalent" constituting interrogation. *See id.* at 301-03. It was certainly a far cry from the "lengthy harangue in the presence of [a] suspect" that the *Innis* court distinguished, and in light of Mr. Spruill's previous loquaciousness with the officers on all manner of topics, it cannot necessarily be said that the comment was "particularly evocative," under the circumstances. *Id.* Thus, even if this court might have decided otherwise had we considered the issue de novo, the OCCA's conclusion that Mr. Lambrecht's statement did not qualify as "interrogation," in the context of the record as a whole, was not an unreasonable application of Supreme Court precedent, including *Innis.* And because Mr. Spruill was not subjected to an interrogation, *Miranda* did not require suppression of his custodial statements.

In sum, Mr. Spruill has not shown that the OCCA's ruling "was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." *Richter*, 562 U.S. at 103. As such, we may not grant federal habeas relief.

IV. CONCLUSION

For the reasons stated, we **AFFIRM** the district court's decision denying Mr. Spruill's 28 U.S.C. § 2254 petition for a writ of habeas corpus.

Entered for the Court

Carolyn B. McHugh
Circuit Judge

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

ETHAN JOHNSON SPRUILL, Petitioner - Appellant, v. JEROLD BRAGGS, JR., Warden, Respondent - Appellee.	No. 20-6009 (D.C. No. 5:19-CV-00442-D) (W.D. Oklahoma)

ORDER GRANTING IN PART AND DENYING IN PART PETITIONER'S CERTIFICATE OF APPEALABILITY*

(Filed Jun. 17, 2020)

Before **PHILLIPS**, **MURPHY**, and **McHUGH**, Circuit Judges.

Petitioner Ethan Johnson Spruill, a prisoner in Oklahoma state custody proceeding with the assistance of counsel, seeks a Certificate of Appealability

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* This order is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

("COA") to challenge the district court's denial of his 28 U.S.C. § 2254 petition for a writ of habeas corpus. We grant a COA as to one of the three claims he asserts in the petition but deny the request as to the remaining two.

I. BACKGROUND

In January of 2014, Mr. Spruill began residing in an apartment building in Norman, Oklahoma, in a unit directly above that of Aaron McCray, Mr. McCray's fiancée, Stephanie Grantham, and Aaron and Stephanie's two children. During the next month, Mr. Spruill learned that Ms. Grantham and Mr. McCray had complained of noise emanating from his apartment, leading to a conversation in which Mr. Spruill asked the couple to contact him directly about future noise complaints.

On February 15, 2014, Mr. Spruill returned to his apartment after a day of drinking. After smoking marijuana in his apartment, he joined a group of people socializing outside his apartment. Ms. Grantham approached and complained that Mr. Spruill had awoken her children by stomping on his apartment floor (Ms. Grantham's ceiling). Mr. Spruill angrily denied having stomped on the floor, told Ms. Grantham that he could hear her yelling at her children every night, and accused her of abusing her children.

Later, Mr. Spruill went downstairs to confront the couple, carrying, as he always did, a revolver on his hip pursuant to a concealed carry permit. Mr. Spruill

knocked on the door and, when the couple did not immediately admit him, Mr. Spruill again accused them of abusing their children, called them cowards, and remarked, "It's not like I'm going to shoot you, or am I?" App., Vol. I at 52.

Mr. McCray ultimately opened the door, but what happened next was the subject of divergent testimony at trial. According to Mr. Spruill, Mr. McCray grabbed him around the neck, pulled him into the apartment, threw him on the floor between two chairs, and Mr. McCray used the weight of his body to restrain Mr. Spruill while simultaneously choking him. According to Ms. Grantham, Mr. Spruill stumbled into the apartment, at which point Mr. McCray asked him to leave and tried to push him out the door. Ms. Grantham further testified that only after Mr. Spruill refused to leave did the two begin fighting on the floor.

At some point during the tussle, Mr. Spruill became convinced that Mr. McCray would kill him from the continued choking. He unholstered his revolver and shot Mr. McCray in the chest several times, leading to Mr. McCray's death. Mr. Spruill returned to his apartment, and, when the police arrived, he surrendered without incident and immediately requested an attorney.

Officer Deny Oesterling transported Mr. Spruill to the police station and escorted him to the station's interrogation room. At Mr. Spruill's request, Officer Oesterling remained with Mr. Spruill in the interrogation room while waiting for the assigned detectives. Mr.

Oesterling testified that during the drive to the station and while the pair sat together in the interrogation room, Mr. Spruill offered several unprompted comments about the shooting, some of which were captured in a recording initiated surreptitiously by Mr. Oesterling.

An hour later, Detectives Corey Lambrecht and Derek Hopkins turned on the interrogation room's videotape recorder and entered the room, relieving Mr. Oesterling. After Mr. Spruill conversed with Detectives Lambrecht and Hopkins for about twenty minutes, during which time he made some inculpatory statements, Mr. Lambrecht told Mr. Spruill that he needed to understand his *Miranda* rights before Mr. Lambrecht could ask him "some detailed questions." App., Vol. I at 127. Mr. Spruill responded: "I've given y'all enough benefit of the doubt. . . . But since the beginning I've said where's Frank Corbois? I need my lawyer here." App., Vol. I at 127. Mr. Lambrecht responded that "this is the first I've heard of you asking for a lawyer just to be clear." App., Vol. I at 128. Shortly thereafter, Mr. Lambrecht told Mr. Spruill that he "definitely want[s] to get . . . a few more details from" Mr. Spruill, to which Mr. Spruill responded, "Ask me. Ask me, please." App., Vol. I at 128 (second alteration in original).

Mr. Lambrecht, apparently sensing the *Miranda* infirmity, then attempted to obtain a written *Miranda* waiver from Mr. Spruill, explaining that "[y]ou have the right to refuse a lawyer and waive your [*Miranda*] rights." App., Vol. I at 128. Mr. Spruill flatly rejected that proposition, responding, "I ain't gonna do that. I

ain't gonna do that." App., Vol. I at 128. Shortly after that exchange, Mr. Lambrecht, still attempting to obtain a written waiver, told Mr. Spruill that "if it were me and it was truly 100% self-defense, I'd . . . be wanting to talk to everyone." App., Vol. I at 129. In response to that remark, Mr. Spruill recounted the events and made several statements that significantly undermined his claim of self-defense.

The State ultimately charged Mr. Spruill with first-degree murder. In pretrial proceedings, Mr. Spruill moved to suppress the recordings documenting the statements he made while he was in custody. The trial judge expressed concern with Mr. Spruill's custodial interrogation, but ultimately denied the motion to suppress. The recordings were presented at trial, redacted only to omit prejudicial statements Mr. Spruill had made about Mr. McCray and Ms. Grantham.

In further pretrial proceedings, the government moved in limine to exclude expert testimony regarding Mr. Spruill's use of force that he had sought to introduce in support of his theory of self-defense. Mr. Spruill's expert proffered his testimony, *in-camera*, to the trial judge. Broadly, the expert testified that it would have been impossible for Mr. Spruill to escape from Mr. McCray absent shooting him. The trial judge granted the State's motion in limine, and the expert testimony was not admitted at trial.

Following trial, the jury rejected Mr. Spruill's self-defense theory, but declined to convict him of first-degree murder, instead finding he committed the

lesser-included offense of first-degree manslaughter. The jury recommended a 23-year sentence, which the trial court imposed. On direct appeal to the Oklahoma Court of Criminal Appeals ("OCCA"), Mr. Spruill raised three constitutional challenges to the validity of his conviction. By summary opinion, the OCCA rejected each challenge and affirmed his conviction.

Less than a year later, Mr. Spruill filed the instant habeas petition in federal district court, raising the same three constitutional challenges rejected by the OCCA. The district court denied relief on all three claims, and further declined to grant Mr. Spruill a COA. Mr. Spruill timely sought a COA from this court.

II. ANALYSIS

A. Certificate of Appealability

Without a COA, we do not possess jurisdiction to review the denial of a petition for a writ of habeas corpus. *Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003). Under the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), a COA "may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When, as here, "a district court has rejected the constitutional claims on the merits, the showing require to satisfy § 2253(c) is straightforward: The petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Miller-El*, 537 U.S. at 338 (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

"This threshold inquiry does not require full consideration of the factual or legal bases adduced in support of the claims." *Id.* at 336. Rather, to give effect to the statutory scheme, we undertake an abbreviated review of the constitutional claims underlying the habeas petition when deciding whether to grant a COA.

And importantly, when, as here, the asserted grounds for habeas relief have been adjudicated on their merits by a state court, we must incorporate AEDPA deference into our COA inquiry. *See Dockins v. Hines*, 374 F.3d 935, 938 (10th Cir. 2004). Thus, in applying the COA standard, we bear in mind that "a federal habeas court may overturn a state court's application of federal law only if it is so erroneous that 'there is no possibility fairminded jurists could disagree that the state court's decision conflicts with [the Supreme] Court's precedents.'" *See Nevada v. Jackson*, 569 U.S. 505, 508-09 (2013) (quoting *Harrington v. Richter*, 562 U.S. 86, 102 (2011)); 28 U.S.C. § 2254(d)(1). And a state court's "factual determinations are presumed correct absent clear and convincing evidence to the contrary." *Howell v. Trammell*, 728 F.3d 1202, 1228 (10th Cir. 2013) (citing 28 U.S.C. § 2254(e)(1)); *see* § 2254(d)(2).

Mr. Spruill asserts three claims for habeas relief: (1) that he suffered a deprivation of his Fifth Amendment privilege against self-incrimination[1] by the trial

[1] The Fifth Amendment's privilege against self-incrimination is applicable to the states through the Fourteenth Amendment's Due Process Clause. *See Malloy v. Hogan*, 378 U.S. 1, 6 (1964).

court's admission of inculpatory statements he made while in police custody; (2) that he was convicted in the absence of proof beyond a reasonable doubt that he was not acting in self-defense, in violation of the Due Process Clause; and (3) that he was deprived of a meaningful opportunity to present a complete defense by the trial court's exclusion of expert testimony proffered in support of his self-defense theory. We review each claim in turn.

1. Fifth Amendment Self-Incrimination Claim

To guard against deprivations of the Fifth Amendment's privilege against self-incrimination, the Supreme Court has held that a request from an individual in police custody to have the presence of counsel must cause any interrogation to "cease until an attorney is present." *Miranda v. Arizona*, 384 U.S. 436, 474 (1966). And police may not cease interrogation only to reattempt interrogation later without having procured counsel: once an accused "expresse[s] his desire to deal with the police only through counsel, [he] is not subject to further interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further communication, exchanges, or conversations with the police." *Edwards v. Arizona*, 451 U.S. 477, 484-85 (1981). "Evidence obtained as a result of a custodial interrogation after an individual requested an attorney must be suppressed." *United States v. Yepa*, 862 F.3d 1252, 1257 (10th Cir. 2017).

After invoking this right, a suspect may change his mind and decide to speak without counsel to police, but "a valid waiver of that right cannot be established by showing only that he responded to further police-initiated custodial interrogation even if he has been advised of his rights." *Edwards*, 451 U.S. at 484. Rather, statements made after the invocation of the Fifth Amendment right to counsel during custodial interrogation may be admitted at trial "only on [a] finding that [the suspect] (a) initiated further discussions with the police, and (b) knowingly and intelligently waived the right he had invoked." *Smith v. Illinois*, 469 U.S. 91, 95 (1984). A waiver of the right to have counsel present during interrogation will be found valid only when it "is voluntary and constitutes 'a knowing and intelligent relinquishment or abandonment of a known right or privilege, a matter which depends in each case upon the particular facts and circumstances surrounding that case, including the background, experience, and conduct of the accused.'" *United States v. Willis*, 826 F.3d 1265, 1277 (10th Cir. 2016) (quoting *Edwards*, 451 U.S. at 482).

The following uncontroverted facts are relevant to our analysis: Mr. Spruill was in custody when he made the contested statements to police, he unequivocally requested counsel immediately upon arrest and several times thereafter (identifying by name the lawyer whose presence he requested), the police made no attempt to procure that or any other attorney, the police never apprised him of the *Miranda* warning, and he

refused to sign a document purporting to waive his Fifth Amendment rights.

The OCCA affirmed the denial of Mr. Spruill's motion to suppress on two distinct grounds. First, the OCCA concluded Mr. Spruill's "statements were not made in response to interrogation from authorities," thereby removing them from the Fifth Amendment's protective ambit. App., Vol. I at 87. Second, the OCCA concluded that Mr. Spruill changed his mind after invoking his right to the presence of counsel during interrogation.

The district court denied habeas relief on this claim on grounds that Mr. Spruill could not overcome AEDPA deference, § 2254(d)(1)-(2). While we agree Mr. Spruill faces a difficult task, a "claim can be debatable [for COA purposes] even though every jurist of reason might agree, after the COA has been granted and the case has received full consideration, that petitioner will not prevail." *Buck v. Davis*, 137 S. Ct. 759, 774 (2017) (quoting *Miller-El*, 537 U.S. at 338). As explained below, it is at least debatable whether the OCCA applied Supreme Court precedent unreasonably and made unreasonable determinations of fact when it concluded (1) Mr. Spruill's inculpatory statements were not made in response to interrogation, and (2) Mr. Spruill changed his mind by initiating conversation with police and further accomplished a voluntary, knowing, and intelligent relinquishment of his right to have counsel present during interrogation.

"[T]he *Miranda* safeguards come into play whenever a person in custody is subjected to either express questioning or its functional equivalent." *Rhode Island v. Innis*, 446 U.S. 291, 300-01 (1980). Thus, "the term 'interrogation' under *Miranda* refers not only to express questioning, but also to any words or actions on the part of the police . . . that the police should know are reasonably likely to elicit an incriminating response." *Id.* at 301.

The OCCA recited these principles in concluding that Mr. Spruill's statements were not made in response to interrogation, and that rather his statements were "volunteered to virtually anyone who would listen while he was at the police department." App., Vol. I at 87. The record confirms that Mr. Spruill, in his intoxicated state, was talkative, especially in non-interrogative conversations with Mr. Oesterling, whom Mr. Spruill repeatedly asked to remain with him in the interrogation room. But the record also reveals that less than two minutes after Mr. Spruill reasserted his request for counsel for at least the third time, and further expressly declined to waive his right to counsel, Mr. Lambrecht told him that "if it were me and it was truly 100% self-defense, I'd . . . be wanting to talk to everyone." App., Vol. I at 129. Reasonable jurists could conclude that, by challenging the veracity of Mr. Spruill's self-defense claim, Mr. Lambrecht's statement was one that "the police should know [is] reasonably likely to elicit an incriminating response." *Innis*, 446 U.S. at

301.[2] And indeed Mr. Lambrecht's remark elicited from Mr. Spruill an admission that severely undermined his self-defense theory: "Officer, if it was truly self-defense, it would have been [Mr. McCray] banging on *my* door. That's where I fucked up. Ins that I went looking for them."[3] App., Vol. I at 129 (emphasis added).

It is similarly debatable whether, as the OCCA concluded, Mr. Spruill "change[d] his mind and decide[d] to speak to police without counsel." App., Vol. I at 87. To reiterate, after invoking his right to have counsel present during interrogation, police could only pursue further interrogation if Mr. Spruill "(a) initiated further discussions with the police, and (b) knowingly and intelligently waived the right he had invoked." *Smith*,

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[2] Additionally, it is debatable whether this entire exchange occurred in contravention of Mr. Spruill's rights. Mr. Spruill invoked his right to have counsel present during interrogation, but the police, not Mr. Spruill, initiated interrogation in the absence of counsel. *See Edwards v. Arizona*, 451 U.S. 477, 485 (1981) ("[I]t is inconsistent with *Miranda* and its progeny for the authorities, at their instance, to reinterrogate an accused in custody if he has clearly asserted his right to counsel."). Yet Messrs. Lambrecht and Hopkins appear to have done precisely that when they entered the room in which Mr. Spruill was detained and began questioning him. It is immaterial that they claimed "this [wa]s the first [they had] heard of [Mr. Spruill] asking for a lawyer." App., Vol. I at 128. An accused need not invoke his right to have counsel present during interrogation to every new police officer with whom he interacts.

[3] Mr. Spruill's admission was inculpatory because, as explained in our analysis of Mr. Spruill's second habeas claim below, self-defense under Oklahoma law is not available "to an aggressor or one who voluntarily enters into a situation armed with a deadly weapon." App., Vol. I at 90.

469 U.S. at 95. Mr. Spruill's response to questions asked *after* his invocation of the right cannot, without more, satisfy this standard. *Edwards*, 451 U.S. at 484 ("[A] valid waiver of th[is] right cannot be established by showing only that he responded to further police-initiated custodial interrogation even if he has been advised of his rights.").

Mr. Spruill had repeatedly asserted his right to counsel before Messrs. Lambrecht and Hopkins entered the room for the purpose of interrogating him. He did so again during their exchange. Reasonable jurists could thus debate whether he initiated further communications with Messrs. Lambrecht and Hopkins—the first showing required for a state to admit statements obtained after invocation of the right to counsel during interrogation. *See Smith*, 469 U.S. at 95.

Even if Mr. Spruill is found to have initiated this interaction with police, reasonable jurists could disagree whether the State satisfied the waiver prong, requiring it to establish that Mr. Spruill—plainly intoxicated and having never been Mirandized during his multiple hours in custody—knowingly and intelligently relinquished his known right to have counsel present during interrogation.

For all these reasons, Mr. Spruill is entitled to a COA on his claim that he was deprived of his privilege against self-incrimination by the admission at trial of custodial statements made in response to police interrogation.

2. Sufficiency-of-the-Evidence Due Process Claim

Mr. Spruill next claims the State presented insufficient evidence to support a guilty verdict in the face of his self-defense theory. He asserts the prosecution failed to carry its burden to prove, beyond a reasonable doubt, that he was *not* acting in self-defense when he shot and killed Aaron McCray.

We will find the State's evidence sufficient to convict if, "after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). When, as here, "a sufficiency challenge was resolved on the merits by the state courts, we have held that AEDPA adds an additional degree of deference, and the question becomes whether the OCCA's conclusion that the evidence was sufficient constituted an unreasonable application of the *Jackson* standard." *Hooks v. Workman*, 689 F.3d 1148, 1166 (10th Cir. 2012) (internal quotation marks omitted) (referring to this standard of review as "deference squared"). As explained below, it is not fairly debatable that Mr. Spruill cannot overcome this highly deferential standard.

In rejecting his sufficiency-of-the-evidence challenge, the OCCA recited trial testimony from Ms. Grantham that Mr. Spruill entered the apartment and refused to leave. The OCCA found this evidence dispositive of Mr. Spruill's sufficiency-of-the-evidence claim

because self-defense under Oklahoma law "is not available to an aggressor or one who voluntarily enters into a situation armed with a deadly weapon," and a trespasser may invoke the defense only if he "has availed himself of every reasonable means of escape from the imminent danger of death or great bodily harm." App., Vol. I at 90. Ms. Grantham's testimony, the OCCA concluded, empowered a "rational trier of fact to find beyond a reasonable doubt the absence of self-defense." App., Vol. I at 90-91.

Although we regard sufficiency-of-the-evidence claims asserted in habeas proceedings as mixed questions of law and fact, *see Maynard v. Boone*, 468 F.3d 665, 673 (10th Cir. 2006), Mr. Spruill challenges only the factual determinations underlying the OCCA's rejection of this claim. But in his request for a COA, as before the district court, Mr. Spruill does nothing to establish that the OCCA unreasonably determined that the above evidence was presented at trial. Instead, he argues the OCCA unreasonably concluded that such evidence caused, as a matter of historical fact, *his* jury to reject his self-defense theory.[4] But the OCCA made

[4] Mr. Spruill further argues that if the jury had been permitted to hear testimony from the self-defense expert he proffered—the exclusion of which forms the basis of his third habeas claim—the jury would have been without sufficient evidence to reject his self-defense theory. We disagree. Mr. Spruill's expert did not, indeed could not, opine on the factual question of whether Mr. Spruill failed to leave the apartment *before* engaging in a tussle with Mr. McCray. Thus, even if Mr. Spruill had been permitted to present expert testimony, it would have done nothing to counter Ms. Grantham's testimony—evidence the OCCA concluded sufficiently supported the jury's rejection of his self-defense theory.

no such finding, and in this context we do not probe jury deliberations to learn which evidence the jury actually relied on in rendering the verdict. The *Jackson* standard, as applied to this case, asks only whether evidence presented at trial, viewed in the light most favorable to the prosecution, could support a hypothetical, rational trier-of-fact's conclusion, beyond a reasonable doubt, that Mr. Spruill did not act in self-defense. The OCCA answered that question in the affirmative, and Mr. Spruill has not shown how the district court's denial of habeas relief on this claim is debatable. He is therefore not entitled to a COA.

3. Meaningful Opportunity to Present a Complete Defense

Finally, Mr. Spruill argues he was deprived of a meaningful opportunity to present a complete defense due to the trial court's exclusion of his expert's testimony proffered to substantiate "that Mr. Spruill could not have escaped from Mr. McCray by using any lesser force." Pet'r's Request for a COA at 51.

"Whether rooted directly in the Due Process Clause of the Fourteenth Amendment or in the Compulsory Process or Confrontation Clauses of the Sixth Amendment, the Constitution guarantees criminal defendants 'a meaningful opportunity to present a complete defense.'" *Crane v. Kentucky*, 476 U.S. 683, 690 (1986) (citations omitted) (quoting *California v. Trombetta*, 467 U.S. 479, 485 (1984)). Nevertheless, "state and federal rulemakers have broad latitude under the

Constitution to establish rules excluding evidence from criminal trials." *Nevada*, 569 U.S. at 509 (quoting *Holmes v. South Carolina*, 547 U.S. 319,324 (2006)). Thus, although the right to present a complete defense "prohibits the exclusion of defense evidence under rules that serve no legitimate purpose or that are disproportionate to the ends that they are asserted to promote," there is no constitutional barrier to the exclusion of "evidence that is repetitive . . . , only marginally relevant or poses an undue risk of harassment, prejudice, [or] confusion of the issues." *Holmes*, 547 U.S. at 326-27 (alterations in original) (quoting *Crane*, 476 U.S. at 689-90). The Supreme Court has "rarely . . . held that the right to present a complete defense was violated by the exclusion of defense evidence under a state rule of evidence." *Nevada*, 569 U.S. at 509.

On direct appeal, the OCCA affirmed the trial court's exclusion of Mr. Spruill's expert testimony, concluding that its probative value "was substantially outweighed by the danger of unfair prejudice, confusion of the issues and misleading the jury." App., Vol. I at 92. The OCCA further found the excluded testimony "cumulative to evidence already presented at trial." *Id.* Having affirmed the evidentiary ruling, the OCCA rejected Mr. Spruill's argument that the exclusion denied him an opportunity to present a complete defense.

In seeking a COA, Mr. Spruill merely argues that his proffered expert testimony was relevant to his

self-defense theory.[5] He makes no attempt to show that (1) the exclusion of that evidence under a state rule of evidence deprived him of a meaningful opportunity to present a complete defense under the relevant framework, or (2) the OCCA's rejection of this claim resulted in a decision based on an unreasonable determination of fact or involved an unreasonable application of federal law. He has thus failed to show that the district court's denial of this claim is fairly debatable. He is not entitled to a COA on this claim.

III. CONCLUSION

For the reasons stated, we **GRANT** Mr. Spruill a COA on his Fifth Amendment self-incrimination claim but **DENY** the a COA on his two other claims.

Appellee is **ORDERED** to file a response brief, within forty-five days of the date of this order, addressing only the merits of the claim for which Mr. Spruill

[5] Mr. Spruill also complains that the OCCA mischaracterized his claim and analyzed it as an admissibility issue under the Oklahoma rules of evidence rather than a constitutional challenge. But the OCCA conducted both analyses, and after affirming the exclusion under the relevant evidentiary rule, the OCCA concluded that Mr. Spruill "was not deprived of his constitutional right to present a complete defense." App., Vol. I at 92.

has been granted a COA. Mr. Spruill may reply within twenty-one days of service of Appellee's brief.

Entered for the Court

Carolyn B. McHugh
Circuit Judge

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

ETHAN JOHNSON SPRUILL, Petitioner, v. JEORLD BRAGGS, JR., Warden, Respondent.	)	Case No. CIV-19-442-D

ORDER

(Filed Dec. 27, 2019)

This matter comes before the Court for review of the Report and Recommendation [Doc. No. 16] issued by United States Magistrate Judge Gary M. Purcell pursuant to 28 U.S.C. § 636(b)(1)(B) and (C). Judge Purcell recommends that the Amended Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 be denied. Petitioner, who is represented by counsel, has filed a timely Objection [Doc. No. 17]. Thus, the Court must make a *de novo* determination of any part of the Report to which a specific objection is made, and may accept, reject, or modify the recommended decision. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3).

Petitioner, a state prisoner, seeks relief from a 2016 conviction of first-degree manslaughter and a

23-year prison sentence.[1] The Oklahoma Court of Criminal Appeals ("OCCA") affirmed Petitioner's conviction. *See Spruill v. State*, 425 P.3d 753 (Okla. Crim. App. 2018). Petitioner timely filed his original Petition on May 14, 2019, and filed the Amended Petition pursuant to Fed. R. Civ. P. 15(a)(1). He asserts three claims: 1) denial of his constitutional right against self-incrimination under *Miranda v. Arizona*, 384 U.S. 436 (1966); 2) failure to prove beyond a reasonable doubt that he was not acting in self-defense; and 3) denial of his constitutional right to present a defense by excluding proposed testimony from his use-of-force expert.

In a 22-page Report, Judge Purcell conducts a careful examination of Petitioner's claims and supporting arguments in light of Respondent's answer, the relevant state court record, and governing legal standards. Judge Purcell concludes that all of Petitioner's claims lack merit. Judge Purcell finds that Petitioner has not shown the state court's determinations were either based on unreasonable findings of fact or unreasonable applications of clearly established federal law. Petitioner objects to all of Judge Purcell's findings and conclusions.[2]

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[1] Petitioner was charged with first-degree murder, but a jury convicted him of a lesser included offense.

[2] For each claim, Petitioner also purports to adopt "all authorities and arguments in his Amended Petition for Writ of Habeas Corpus and Memorandum of Law in Support." *See* Obj. at 2, 16, 19. Because a specific objection is necessary to preserve an issue for further review, however, the Court finds this attempt at

Claim 1: Self-Incrimination

The death of the victim, Aaron McCray, occurred in the apartment where he and his family lived. Petitioner resided in an apartment directly above them. After shooting and killing Mr. McCray, Petitioner returned to his own apartment, and police officers who responded to the shooting found him there. Petitioner surrendered without incident and immediately stated he wanted an attorney. However, Petitioner (who was intoxicated) proceeded to talk while being transported to the police department, and volunteered his version of events. Also, when Petitioner was taken to an interview room, he asked the transporting officer to remain in the room with him. Without Petitioner's knowledge, the officer took a tape recorder into the room and recorded what Petitioner said.

The detectives assigned to investigate Petitioner's case also recorded what transpired in the interview room. Soon after the detectives entered the room, Petitioner requested an attorney, but the officers did not terminate the interview. Petitioner proceeded to talk about the incident and describe what happened. Although the detectives did not ask direct questions, one made a comment to the effect that if he were involved in a self-defense situation, he personally would want to talk about it. Both before and during the interview, Petitioner repeatedly made incriminating statements about the shooting.

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global incorporation to be ineffectual and addresses only Petitioner's Objection.

The OCCA summarized the relevant factual findings as follows:

> The record shows that [Petitioner] was in custody at the time of his various recorded statements; that [Petitioner] requested the presence of counsel repeatedly starting at the moment he was arrested in front of his apartment; that [Petitioner] 's statements were unwarned – that is, authorities never read him the warning mandated by *Miranda* . . . ; and that [Petitioner] refused to sign any waiver indicating that he understood his rights. However, the record also shows that [Petitioner] 's statements were not made in response to interrogation from authorities. Rather, [Petitioner] 's statements were volunteered to virtually anyone who would listen while he was at the police department. Volunteered statements of any kind are not barred by the Fifth Amendment.
>
> "Once a suspect in custody has asserted his right to speak only through counsel, all attempts at interrogation must cease. A suspect can, however, change his mind and decide to speak to police without counsel." Here, the State met its burden to prove that [Petitioner] 's statements were the product of an essentially free and unconstrained choice by [Petitioner]. . . .

Spruill, 425 P.3d at 755 (citations omitted).

Framed by the deferential standard of 28 U.S.C. § 2254(d), Petitioner mounts a twofold attack on the

OCCA's disposition of his first claim. He challenges both the reasonableness of the state court's determination of the facts in light of the evidence presented, and the reasonableness of the state court's application of *Miranda* and other Supreme Court cases. *See* Obj. at 7-8, 10-15 (discussing *Edwards v. Arizona*, 451 U.S. 477 (1981); *Davis v. United States*, 512 U.S. 452 (1994); and *Rhode Island v. Innis*, 446 U.S. 291 (1980)). Upon *de novo* consideration, the Court fully concurs in Judge Purcell's analysis of this claim.

Pursuant to 28 U.S.C. § 2254(e)(1), "a determination of a factual issue made by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence." The Tenth Circuit has held that "[t]he presumption of correctness also applies to factual findings made by a state court of review based on the trial record." *Al-Yousif v. Trani*, 779 F.3d 1173, 1181 (10th Cir. 2015) (internal quotation omitted). The OCCA's critical findings in this case are that Petitioner's incriminating statements were not made in response to interrogation but were volunteered, and that he changed his mind each time he requested counsel and voluntarily decided to speak.

After careful consideration of the record, the Court finds that Petitioner has failed to overcome the presumption of correctness of the OCCA's findings. Petitioner concedes "there were some volunteered statements," and argues in a conclusory manner "there were numerous incriminating statements that were obtained over objection, contrary to Supreme Court

precedents." *See* Obj. at 13. Petitioner does not point to clear and convincing evidence that any particular statement was not volunteered or any particular request for counsel was not abandoned. Petitioner instead contends the police officers "strategically engaged in conduct specifically designed to cause [him] to make incriminating statements in their presence" and this "calculated scheme . . . [was] the functional equivalent of questioning" as defined by the Supreme Court in *Innis*. *Id.* at 2, 14. However, the OCCA unequivocally rejected Petitioner's view of the evidence; the OCCA expressly found that his incriminating statements "were not made in response to interrogation" and, in so doing, specifically referenced *Innis* and its definition of "the term 'interrogation' for *Miranda* purposes." *See Spruill*, 425 P.3d at 755. The Court finds that Petitioner has failed to show that the OCCA made an unreasonable determination of the facts when it found that Petitioner volunteered his incriminating statements.

Pursuant to 28 U.S.C. § 2254(d)(1), Petitioner is not entitled to relief unless he establishes that the OCCA's adjudication of his *Miranda* claim "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." "Clearly established Federal law for purposes of § 2254(d)(1) includes only the holdings, as opposed to the dicta, of [the Supreme] Court's decisions." *White v. Woodall*, 572 U.S. 415, 419 (2014) (internal quotations and alterations omitted). "An OCCA decision is

'contrary to' a clearly established law if it applies a rule different from the governing law set forth in Supreme Court cases, or if it decides a case differently than the Supreme Court has done on a set of materially indistinguishable facts." *Lockett v. Trammell*, 711 F.3d 12218, 1231 (10th Cir. 2013) (internal quotations and alterations omitted); *see Bell v. Cone*, 543 U.S. 447, 452-54 (2005); *Wood v. Carpenter*, 907 F.3d 1279, 1289 (10th Cir. 2018). "'It is settled that a federal habeas court may overturn a state court's application of federal law only if it is so erroneous that there is no possibility fair-minded jurists could disagree that the state court's decision conflicts with [the Supreme] Court's precedents.'" *Al-Yousif*, 779 F.3d at 1180 (quoting *Nevada v. Jackson*, 569 U.S. 505, 508-09 (2013)) (alteration in *Al-Yousif*, internal quotations omitted); *see also Wood*, 907 F.3d at 1289 ("a state court's application of federal law is only unreasonable if all fairminded jurists would agree the state court decision was incorrect") (internal quotation omitted).

Upon *de novo* consideration of Petitioner's claim, the Court finds that he has not met his burden to show the OCCA unreasonably applied clearly established federal law. As discussed *supra*, the crux of Petitioner's argument is that the police officers engaged in conduct that was calculated to elicit incriminating statements and was the "functional equivalent of questioning" under *Innis*. *See* Obj. at 14-15. He contends "coercive police tactics" resulted in "blatant *Innis* violations." *Id.* at 15. However, Petitioner's argument is contrary to the OCCA's factual finding that Petitioner's statements

"were volunteered to virtually anyone who would listen." *See Spruill*, 425 P.3d at 755. Under *Miranda*, 384 U.S. at 478, "[v]olunteered statements of any kind are not barred by the Fifth Amendment." Therefore, the Court finds that Judge Purcell correctly concludes Petitioner has not shown a basis for relief on his first claim.

B. Claim 2: Sufficiency of the Evidence

On the date of the shooting, Petitioner knocked on the door of the victim's apartment and entered when Mr. McCray opened it, either voluntarily or (according to Petitioner) by being pulled inside. A physical confrontation ensued, and Petitioner fired a loaded handgun he was carrying. Petitioner asserted at trial that he was acting in self-defense, but the jury rejected his claim. Petitioner now challenges the sufficiency of the evidence to prove he was not acting in self-defense.

An insufficiency of evidence claim is governed by the "rational fact-finder" standard announced in *Jackson v. Virginia*, 443 U.S. 307 (1979), which requires a court to determine "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Id.* at 319 (emphasis in original). To assess the sufficiency of the evidence, a reviewing court must "first determine the elements of the offense and then examine whether the evidence suffices to establish each element." *Anderson-Bey v. Zavaras*, 641 F.3d 445, 448

(10th Cir. 2011). In federal habeas proceedings, where a sufficiency challenge was resolved on the merits by the state courts, there is "an additional degree of deference," and the question becomes "whether the OCCA's conclusion that the evidence was sufficient constituted an unreasonable application of the *Jackson* standard." *Diestel v. Hines*, 506 F.3d 1249, 1267 (10th Cir. 2007) (internal quotation omitted). The Tenth Circuit "call[s] this standard of review 'deference squared.'" *Hooks v. Workman*, 689 F.3d 1148, 1166 (10th Cir. 2012) (quoting *Young v. Sirmons*, 486 F.3d 655, 666 n. 3 (10th Cir. 2007)); *see Torres v. Lytle*, 461 F.3d 1303, 1313 (10th Cir. 2006).

To prove the offense of first-degree manslaughter under the circumstances of Petitioner's case, "the State was obligated to prove, beyond a reasonable doubt, that [Petitioner] did not act in self-defense." *Spruill*, 425 P.3d at 756 (internal quotation omitted). *Id.* In analyzing this claim on direct appeal, the OCCA summarized the trial evidence, including eyewitness testimony from the victim's wife, that "disputed [Petitioner's] version of events" and "showed he was the aggressor who instigated this entire deadly affair." *Id.* The OCCA also found that, viewing the evidence in favor of the prosecution, Petitioner "was clearly a trespasser" inside the victim's apartment. *Id.* Under Oklahoma law, self-defense "is not available to an aggressor or one who voluntarily enters into a situation armed with a deadly weapon," and "a trespasser's right to self-defense arises only after the trespasser has availed himself of every reasonable means of escape

from the imminent danger of death or great bodily harm." *Id.* Applying these legal principles to the trial evidence, the OCCA concluded that "sufficient evidence was presented at trial to allow any rational trier of fact to find beyond a reasonable doubt the absence of self-defense." *Id.*

Petitioner cannot persuasively argue that the OCCA's determination of his claim was an unreasonable application of the *Jackson* standard. Instead, his challenge hinges on evidence excluded from the trial, as argued in his third claim *infra*, which was "the bulk of the evidence for a valid determination of self-defense." *See* Obj. at 16. According to Petitioner, "[t]he very testimony that would have supported [his] self-defense claim, was excluded by the State trial and appellate courts." *Id.* Based on the record actually presented, however, the Court finds no basis for relief on Petitioner's second claim.[3]

C. Claim 3: Exclusion of Defendant's Expert

Petitioner asserts that by excluding the proposed testimony of his use-of-force expert, John Boren, the trial court violated his constitutional right to present a complete defense. Judge Purcell characterizes this claim as one that the state court's evidentiary ruling

[3] Petitioner also seems to argue, without expressly so stating, that the OCCA's findings that he was a trespasser and aggressor are unreasonable factual determinations. *See* Obj. at 17. To the extent this was Petitioner's intended argument, the Court rejects it.

resulted in a denial of Petitioner's right to due process, and concludes that exclusion of Mr. Boren's testimony "did not make [Petitioner's] trial fundamentally unfair." *See* R&R at 21. Petitioner complains that Judge Purcell mischaracterizes his claim and fails to address whether his right to present a defense was violated. *See* Obj. at 19-20. Upon *de novo* consideration of the claim under this theory, the Court finds that Petitioner is not entitled to relief on this ground.[4]

The Supreme Court has held that "the Constitution guarantees criminal defendants 'a meaningful opportunity to present a complete defense.' *Crane v. Kentucky*, 476 U.S. 683, 690 (1986) (quoting *California v. Trombetta*, 467 U.S. 479, 485 (1984)). The Court has "also recognized 'that state and federal rulemakers have broad latitude under the Constitution to establish rules excluding evidence from criminal trials' and "[o]nly rarely [has it] held that the right to present a complete defense was violated by the exclusion of defense evidence under a state rule of evidence." *Nevada v. Jackson*, 569 U.S. 505, 509 (2013) (quoting *Holmes v. South Carolina*, 547 U.S. 319, 324 (2006)) (internal quotation and citation omitted).

In this case, the OCCA determined both that the trial court properly excluded Mr. Boren's testimony under state evidentiary rules and that Petitioner "was

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[4] Because Petitioner does not challenge Judge Purcell's analysis of any due process claim asserted, he has waived further review of this issue. *See United States v. 2121 East 30th St.*, 73 F.3d 1057, 1060 (10th Cir. 1996); *Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991).

not deprived of his constitutional right to present a complete defense." *See Spruill*, 425 P.3d at 756. In so doing, OCCA specifically referenced prior decisions applying *Crane* and other federal decisions. *Id.* at 756-57 (citing *Simpson v. State*, 230 P.3d 888, 895 (Okla. Crim. App. 2010); *Pavatt v. State*, 159 P.3d 272, 286 (Okla. Crim. App. 2007); and "cases cited therein"). Petitioner attempts to show this ruling was an unreasonable application of federal law as determined by the Supreme Court by relying solely on *Crane. See* Obj. at 20-21. However, *Crane* involved the exclusion of "competent, reliable evidence bearing on the credibility of a confession" that was "central to the defendant's claim of innocence." *Crane*, 476 U.S. at 690-91.

Upon *de novo* consideration of Petitioner's claim that his constitutional right to present a complete defense was violated by the exclusion of his use-of-force expert, the Court finds that Petitioner has failed to show that the OCCA's application of federal law was so erroneous that all fair-minded jurists would agree that the state court's decision conflicts with Supreme Court precedent.

For these reasons, the Court finds no basis in Petitioner's Objection to disagree with Judge Purcell's thorough analysis of the issues and Petitioner's claims.

IT IS THEREFORE ORDERED that the Report and Recommendation [Doc. No. 16] is ADOPTED, as set forth herein. The Amended Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 [Doc. No. 7] is DENIED. A separate judgment shall be entered.

IT IS FURTHER ORDERED that pursuant to Rule 11(a) of the Rules Governing Section 2254 Cases, the Court must issue or deny a certificate of appealability ("COA") when it enters a final order adverse to a petitioner. A COA may issue only upon "a substantial showing of the denial of a constitutional right." *See* 28 U.S.C. §2253(c)(2). "A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003); *see also Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Upon consideration, the Court finds the requisite standard is not met in this case. Therefore, a COA is denied.

IT IS SO ORDERED this 27th day of December, 2019.

/s/ Timothy D. DeGiusti
TIMOTHY D. DeGIUSTI
Chief United States
District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

ETHAN JOHNSON SPRUILL, Petitioner, v. JEORLD BRAGGS, JR., Warden, Respondent.	Case No. CIV-19-442-D

JUDGMENT

(Filed Dec. 27, 2019)

Pursuant to the Order adopting the magistrate judge's Report and Recommendation, the Amended Petition Under 28 U.S.C. § 2254 for a Writ of Habeas Corpus is denied. The Court therefore enters judgment in favor of the respondent, Warden Jeorld Braggs, Jr. Further, a certificate of appealability is denied.

Entered this 27th day of December, 2019.

/s/ Timothy D. DeGiusti
TIMOTHY D. DeGIUSTI
Chief United States
District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

ETHAN JOHNSON SPRUILL, Petitioner, v. GERALD BRAGGS, JR., Warden, Respondent.	)	No. CIV-19-442-D

REPORT AND RECOMMENDATION

(Filed Aug. 30, 2019)

Petitioner, a state prisoner appearing through counsel, has filed an Amended Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. Doc. No. 7. Respondent has responded to the Petition, Doc. No. 10, and filed the relevant state court records, including the transcripts of the trial and pretrial proceedings. Petitioner replied to the response. Doc. No. 15. The matter has been referred to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B). For the following reasons, it is recommended that the Petition be denied.

I. Background

In January 2014, Ethan Spruill moved into unit 16 of the Cherrystone Apartments in Norman, Oklahoma. The apartment he shared with his cousin was directly above the apartment where Aaron McCray lived with

his fiancé, Stephanie Grantham, and two children. Mr. Spruill testified that as he was moving in, he saw Ms. Grantham standing with her arms folded over her chest glaring at him.

During the next month, Mr. Spruill learned that the couple had called the apartment manager to complain about noise from his apartment. Mr. Spruill had been sleeping most of the day he received that message, and he went to the couple's apartment to explain he had not made the noise. Both Ms. Grantham and Mr. Spruill testified the three had a polite conversation during which Mr. Spruill asked the couple to please come to him first before calling the apartment manager about any complaints they had.

On February 15, 2014, Mr. Spruill returned from work to the apartment complex about 7:00 p.m. He had been drinking during the day at work and on the way home. As Mr. Spruill was walking to the apartment complex from the parking lot, he found the couple who lived next door to Mr. McCray sitting outside their apartment smoking and drinking. Mr. Spruill asked one of them for a cigarette. He stayed downstairs with the couple, smoking and drinking beer and vodka with them.

Around 10:00 p.m., Mr. McCray returned home from work. Mr. Spruill had just started upstairs and was on the second-floor landing when he saw Mr. McCray walking from the parking lot to the apartment complex. Mr. Spruill testified that, in an attempt to be friendly, he greeted Mr. McCray, asking if they were

O.K. The two men had a short, friendly conversation, after which Mr. McCray went into his apartment. Mr. Spruill walked to his apartment, went inside and smoked marijuana. By this time, Mr. Spruill was intoxicated.

After smoking marijuana, Mr. Spruill came out of his apartment and found several people socializing on the upstairs landing. Shortly after he joined the group on the upstairs landing, Ms. Grantham approached him, asked him if he was the occupant of unit 16, and then asked him if he knew what time it was. She complained that he had awakened her children by stomping on the floor of his apartment. Mr. Spruill became angry, denied stomping on the floor, told Ms. Grantham that he heard her yelling at her children every night, and accused her of child abuse.

Ms. Grantham testified that Mr. McCray called 911 because he had heard the exchange between Ms. Grantham and Mr. Spruill. According to Ms. Grantham, the dispatcher let them know the police were on their way. Having undressed when he got home, Mr. McCray put on jeans, a shirt, and the steel-toed boots he had worn to work. Mr. Spruill, unaware that Mr. McCray had called the police, went downstairs to confront the couple. Mr. Spruill had a concealed carry permit, and he had his revolver on his left hip in a holster as he always did. Mr. Spruill beat on the door of Mr. McCray's apartment, repeated his accusations of child abuse, called the couple cowards and said, "It's not like I'm going to shoot you, or am I?" He testified that he

made the last statement in a sarcastic tone, thinking that the couple would never open the door.

But Mr. McCray did open the door, and Mr. Spruill either stumbled into the apartment or was grabbed around the neck by Mr. McCray and pulled into the apartment. Ms. Grantham called 911 as the two men struggled and stayed on the phone with the dispatcher during the ensuing fight. The men fell between two pieces of furniture, ending up with the 326-pound Mr. McCray on top of Mr. Spruill, pinning him down. Mr. Spruill testified that Mr. McCray was choking him and he was not able to get away. Convinced Mr. McCray was going to choke him to death, Mr. Spruill pulled his gun from the holster on his left hip and shot Mr. McCray in the chest several times. Ms. Grantham testified that Mr. McCray got up bleeding from chest wounds and slumped over a chair. Mr. Spruill returned to his apartment. When the authorities arrived, he immediately stated he wanted an attorney and surrendered to the police without incident.

Mr. Spruill was charged with First-Degree Murder in the District Court of Cleveland County, Oklahoma, Case No. CF-2014-322. He was convicted of First-Degree Manslaughter in violation of Okla. Stat. tit. 21, § 715. The trial court sentenced him on July 13, 2016, to twenty-three years' imprisonment, the sentence recommended by the jury. He appealed his conviction to the Oklahoma Court of Criminal Appeals ("OCCA"), Case No. F-2016-629, raising three propositions of error: that his constitutional rights against self-incrimination were violated by the introduction of unwarned

statements made after he had been taken into custody and without representation by an attorney he had repeatedly requested; that the State failed to prove beyond a reasonable doubt that he did not act in self-defense; and that he was denied his right to present his case when the trial court refused to allow a force expert to testify on his behalf. By Summary Opinion entered May 17, 2018, the OCCA affirmed Petitioner's conviction. Response, Ex. 4, (Doc. No. 10-4).

II. Issues Presented

Before this Court, Mr. Spruill raises the same challenges to his conviction he raised before the OCCA:

1. Petitioner was denied his constitutional protections against self-incrimination through a deliberate effort by law enforcement to obtain and record incriminating statements from an intoxicated, unsophisticated suspect, in violation of the United States Constitution. Doc. No. 7 at 3.

2. The State failed to prove beyond a reasonable doubt that Petitioner was not acting in self-defense at the time he shot and killed Aaron McCray, making the evidence insufficient to support his conviction in violation of the Due Process Clause of the United States Constitution. *Id.* at 4.

3. The Petitioner's constitutional right to present a defense was denied when the trial court and the Oklahoma Court of Criminal Appeals refused to permit the defense to introduce the

> testimony of an expert on force to aid and assist the jury in its determination of whether Petitioner was acting in self-defense during the shooting incident. *Id.*

III. Standard of Review of Constitutional Claims

Under the Antiterrorism and Effective Death Penalty Act ("AEDPA"), a federal court cannot grant habeas relief with respect to a state prisoner's constitutional claim that was adjudicated on the merits in state court proceedings unless the state court decision (1) was "contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States," or (2) "was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. §2254(d). AEDPA directs courts to "ensure a level of 'deference to the determinations of state courts, provided those determinations did not conflict with federal law or apply federal law in an unreasonable way." *Williams v. Taylor*, 529 U.S. 362, 386 (2000) (*quoting* H.R. Conf. Rep. No. 104-518, p. 111 (1996)).

Under this standard, a writ of habeas corpus will issue only if "a state court's application of federal law . . . is so erroneous that there is no possibility fairminded jurists could disagree that the state court's decision conflicts with [the Supreme] Court's precedents." *Nevada v. Jackson*, 569 U.S. 505, 508-09 (2013) (quotations and citations omitted). Even a showing of 'clear error' will not suffice." *White v. Woodall*, 572 U.S. 415,

419 (2014) (quoting *Lockyer v. Andrade*, 538 U.S. 63, 7576 (2003)).

"[W]hether a state court's decision was unreasonable must be assessed in light of the record the [state appellate] court had before it." *Holland v. Jackson*, 542 U.S. 649, 652 (2004). Consequently, federal habeas "review is limited to the record that was before the state court that adjudicated the claim on the merits." *Cullen v. Pinholster*, 563 U.S. 170, 181 (2011). In reviewing a state appellate court's decision, the state court's findings of fact are presumed correct and entitled to deference. 28 U.S.C. § 2254(e)(1).

IV. Analysis

A. Ground One: Statements Admitted at Trial

It is undisputed that Mr. Spruill repeatedly requested an attorney after the shooting. When he first came in contact with the authorities at the apartment complex, he stated he wanted an attorney. Several times after he was taken into custody, including when detectives came to interrogate him, he again asked for an attorney. Nothing in the record indicates the authorities involved made any attempt to comply with his request. It is also undisputed that Mr. Spruill was never fully informed of his rights under the Fifth Amendment and *Miranda v. Arizona*, 384 U.S. 436, 469-70 (1966). Nevertheless, the recordings, redacted only to exclude some highly prejudicial statements Mr. Spruill had made about the victim and Ms. Grantham,

were admitted as evidence during the trial and played for the jury.

The trial court entertained Mr. Spruill's Motion to Suppress the audio and video tape recordings of Mr. Spruill's custodial statements. *Transcript of Proceedings had Thursday, March 10, 2016, Before the Honorable Tracy Schumacher, District Judge* ("Mot. Tr.") At the hearing, Officer Denny Osterling testified he transported Mr. Spruill to the Norman Police Department. Although he had a card with the *Miranda* warnings with him, Officer Osterling did not read the warnings to Mr. Spruill. Mot. Tr. at 20-24. Officer Osterling testified that during the short trip to the police department, he attempted to engage in conversation with Mr. Spruill by asking only general questions to get Mr. Spruill's mind off the events of that evening But Mr. Spruill, according to Officer Osterling, repeatedly and voluntarily told his version of what had happened at the apartment complex. The exchange between the two in the police car was not recorded because Officer Osterling's tape recorder was broken.

When they arrived at the police department, Mr. Spruill was taken to an interrogation room. He asked Officer Osterling to stay in the room with him. Officer Osterling borrowed a tape recorder from another officer, joined Mr. Spruill in the interrogation room and secretly recorded everything Mr. Spruill said. Mot. Tr. at 30-33.

About an hour later, Detectives Corey Lambrecht and Derek Hopkins turned on the videotape recorder

and entered the interrogation room. Mr. Spruill told them he had requested an attorney. Detective Lambrecht testified that he started to read the *Miranda* warnings, but Mr. Spruill said, "I don't need that. I'll just talk to you." Mot. Tr. 97-98. When asked to sign the form acknowledging he understood his rights, Mr. Spruill said, "I'm aware. You have the right to remain silent, you know what I mean. I understand all that." *Id.* at 98." Nevertheless, Mr. Spruill refused to sign the form. Despite asking for an attorney, however, he continued to talk about the incident at the apartment complex. *Id.* at 98. Detective Lambrecht testified Mr. Spruill asked if he could be straight up with him without signing the paper. *Id.* Mr. Spruill then continued to talk about the incident without being asked direct, investigatory questions.

When questioned by the defense, however, Detective Lambrecht admitted that his report noted he had "told Ethan that if this were me and if this were truly a self-defense situation, I personally would want to talk to anyone." Mot. Tr. at 129. After that comment, Mr. Spruill described the incident again. The trial court deferred the decision on the motion and asked for more briefing.

In a subsequent proceeding, the trial judge expressed her concern with the interrogation process, but ultimately determined that Mr. Spruill never actually invoked his right to an attorney because after each request, he continued to voluntarily speak, without being questioned. The trial court concluded Mr. Spruill abandoned each request for an attorney directly after he

made the requests. *Transcript of Proceedings had Thursday, March 31, 2016* at 9-10. The trial judge agreed with defense counsel that the jury should be instructed to determine whether the statements were made voluntarily, beyond a reasonable doubt, before considering them as evidence. *Id.* at 10-11.[1]

The Fifth and Fourteenth Amendments provide the accused a right to have counsel present during custodial interrogation. In *Miranda v. Arizona*, the Supreme Court held:

> If the individual states that he wants an attorney, the interrogation must cease until an attorney is present. At that time, the individual must have an opportunity to confer with the attorney and to have him present during any subsequent questioning If the individual cannot obtain an attorney and he indicates that he wants one before speaking to police, they must respect his decision to remain silent.

Miranda, 384 U.S. at 474. The Supreme Court expanded on that principle in *Edwards v. Arizona*, 451 U.S. 477, 481 (1981), concluding that once an individual who is subjected to custodial interrogation expresses a desire for counsel, that individual is "not subject to further interrogation by the authorities until counsel has been made available to him, unless the

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[1] The record reflects that the trial court read Instruction 16 to the jury, which informed the jury they should consider Mr. Spruill's custodial statements only if they determined beyond a reasonable doubt that the comments were made voluntarily.

accused himself initiates further communication, exchanges, or conversations with the police." *Edwards*, 451 U.S. at 484-85; *Davis v. United States*, 512 U.S. 452, 458 (1994) ("[I]f a suspect requests counsel at any time during the interview, he is not subject to further questioning until a lawyer has been made available or the suspect himself reinitiates conversation."). But in *Rhode Island v. Innis*, The Supreme Court defined "interrogation" to include statements and actions of authorities in addition to direct questions:

> [T]he *Miranda* safeguards come into play whenever a person in custody is subjected to either express questioning or its functional equivalent. That is to say, the term "interrogation" under Miranda refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect. The latter portion of this definition focuses primarily upon the perceptions of the suspect, rather than the intent of the police. This focus reflects the fact that the *Miranda* safeguards were designed to vest a suspect in custody with an added measure of protection against coercive police practices, without regard to objective proof of the underlying intent of the police. A practice that the police should know is reasonably likely to evoke an incriminating response from a suspect thus amounts to interrogation. But, since the police surely cannot be held accountable for the

> unforeseeable results of their words or actions, the definition of interrogation can extend only to words or actions on the part of police officers that they should have known were reasonably likely to elicit an incriminating response.

Rhode Island v. Innis, 446 U.S. 291, 300-02 (1980). Mr. Spruill argues, as he did before the OCCA, that pursuant to *Innis*, Detective Lambrecht's statement regarding self-defense was the "functional equivalent" of interrogation. He further argues that Mr. Spruill was intoxicated, unsophisticated and fearful of the authorities when he made incriminating statements.

The OCCA found that Mr. Spruill was in custody when he made the statements at issue, that he had repeatedly requested the presence of an attorney, that the authorities had never read the warning required by *Miranda*, and that Mr. Spruill had refused to sign a waiver indicating that he understood his rights. Doc. No. 104 at 3-4. Citing *Innis* as well as State law, however, the OCCA determined the trial court did not abuse its discretion in admitting the statements into evidence. The OCCA found the statements were not made in response to interrogation from authorities and were "volunteered to virtually anyone who would listen while [Mr. Spruill] was at the police department." Doc. No. 10-4 at 4. The OCCA further found Mr. Spruill had changed his mind about talking to the authorities only through counsel:

> "'Once a suspect in custody has asserted his right to speak only through counsel, all

> attempts at interrogation must cease. A suspect can, however, change his mind and decide to speak to police without counsel.'" *Underwood v. State*, 2011 Ok Cr 12, ¶ 33, 252 P.3d at 238. There is no constitutional prohibition to admission of these statements at trial despite Appellant's requests for counsel, *see Frederick v. State*, 2001 OK CR 34, ¶¶ 92-93, 37 P.3d 908, 934, or his intoxication. *Coddington v. State*, 2006 OK CR 34, ¶ 38, 142 P.2d 437, 448. Appellant's argument that he was uninformed of his rights and fearful of authorities when he made these statements is also not supported by the record.

Doc. No. 10-4 at 4-5.

Oklahoma law regarding the voluntariness of statements made under the influence of intoxicants is well-settled:

> "[S]elf-induced intoxication, short of mania, or such impairment of the will and mind as to make the person confessing unconscious of the meaning of his words, will not render a confession inadmissible, but goes only to the weight to be accorded to it."

Coddington v. State, 142 P.3d 437, 448 (Okla. Crim. App. 2006) (*quoting Moles v. State*, 520 P.2d 822, 824 (Okla. Crim. App. 1974)); *see also*, *United States v. Muniz*, 1 F.3d 1018, 1022 (10th Cir.1993) ("'[t]he state of intoxication does not automatically render a statement involuntary.'"); *Dickerson v. United States*, 530 U.S. 428, 434 (2000) (test for determining voluntariness of confession is "whether a [suspect's] will was

overborne by the circumstances surrounding the giving of a confession.") (internal quotation marks omitted).

The decision of the OCCA on this issue is not "so erroneous that there is no possibility fairminded jurists could disagree that the state court's decision conflicts with [the Supreme] Court's precedents." *Nevada v. Jackson*, 569 U.S. 505, 50809 (2013). Additionally, the findings of fact determined in the state court proceedings, to which this Court must give deference, were not unreasonable determinations in light of the evidence presented.

Having failed to meet the high standard of demonstrating the custodial statements were admitted during the trial in violation of the Constitution, Mr. Spruill is not entitled to habeas relief on this ground.

B. Ground Two: Sufficiency of the Evidence to Disprove Self-Defense

Petitioner contends, as he did on direct appeal, that the State failed to present sufficient evidence at trial to prove he did not act in self-defense when he shot Mr. McCray. When a defendant raises self-defense as the justification for a criminal act, the Due Process Clause requires the State to prove beyond a reasonable doubt that the act was not done in self-defense. *See Mullaney v. Wilbur*, 421 U.S. 684, 705 (1970).

The appropriate standard of review for a sufficiency of the evidence claim is "whether, 'after viewing

the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the [petitioner guilty] beyond a reasonable doubt.'" *Dockins v. Hines*, 374 F.3d 935, 939 (10th Cir. 2004) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). "This standard of review respects the jury's responsibility to weigh the evidence and to draw reasonable inferences from the testimony presented at trial." *Dockins*, 374 F.3d at 939. "Because '[s]ufficiency of the evidence is a mixed question of law and fact, [w]e ask whether the facts are correct and whether the law was properly applied to the facts, which is why we apply both 28 U.S.C. § 2254(d)(1) and (d)(2) when reviewing sufficiency of the evidence on habeas.'" *Diestel v. Hines*, 506 F.3d 1249, 1267 (10th Cir. 2007) (*quoting Maynard v. Boone*, 468 F.3d 665, 673 (10th Cir. 2006)). The question to be resolved is "whether the OCCA's conclusion that the evidence was sufficient constituted an unreasonable application of the *Jackson* standard." *Patton v. Mullin*, 425 F.3d 788, 796 (10th Cir. 2005).

It is undisputed that after Ms. Grantham confronted Mr. Spruill about the noise she had heard from upstairs, he went downstairs to her apartment armed with a gun he legally carried regularly and banged on her apartment door. He, himself, admitted making inappropriate statements as he stood outside the apartment door. Trial Transcript ("Tr.") 1567-1568. Mr. Spruill testified that almost in one movement Mr. McCray opened the door, grabbed him by the neck, pulled him into the apartment, threw him down

between two chairs, fell on top of him and started choking him. Tr. 1570-1571.

But Ms. Grantham testified that when Mr. McCray opened the door, Mr. Spruill "stumbled" inside the apartment, whereupon Mr. McCray told Mr. Spruill to leave and tried to push him out the door. Tr. 728-729. According to Ms. Grantham, it was only after Mr. McCray was unable to get Mr. Spruill to leave, that the two men began to fight, stumbling over a chair about ten feet from the door. Tr. 730, 733. Ms. Grantham testified that Mr. McCray was on top of Mr. Spruill, but she could not see either man's hands. After she heard gunshots, Ms. Grantham saw Mr. McCray get up, bleeding from the chest. Tr. 337.

One of the residents of the apartment complex, Patrick Folmer, witnessed some of the events that night. He testified that he saw Mr. Spruill "budging" his way through Mr. McCray's apartment door, going all the way inside the apartment. Tr. 663-665. He did not remember seeing Mr. McCray putting his hands around Mr. Spruill's neck or pulling him into the apartment, but he admitted that it was possible. Tr. 693-694.

"Self-defense is an affirmative defense which admits the elements of the charge, but offers a legal justification for conduct which would otherwise be criminal." *Davis v. State*, 268 P.3d 86, 114 (Okla. Crim. App. 2011). Under Oklahoma law, a defendant is justified in using deadly force only if a reasonable person in the defendant's circumstances and from the defendant's viewpoint would reasonably have believed he

was in imminent danger of death or great bodily injury. *Id.* The defense is not available to an aggressor or to one who voluntarily enters into a situation armed with a deadly weapon, *id.* at 115, nor is it available to one who engages in mutual combat. *West v. State*, 798 P.2d 1083, 1085 (Okla. Crim. App. 1990). Moreover, a trespasser has the right to defend himself only after he has tried every reasonable means of escaping the imminent danger of great bodily harm or death. "[A] person is a trespasser if that person has refused to leave the land of another after a lawful request to leave has been made to him." *Jones v. State*, 201 P.3d 869, 886 (Okla. Crim. App. 2009). The OCCA determined that the evidence was sufficient to demonstrate Mr. Spruill was a trespasser and the aggressor, making the assertion of self-defense unavailable to him. Citing Okla. Stat. tit. 21, § 1289.25 (2009),[2] the OCCA determined "the victim had an absolute right under these circumstances to defend himself, and his family, using deadly force inside his home." Doc. No. 10-4 at 7.

In this case, the reasoning and fact-finding of the OCCA is persuasive, and the OCCA cited and applied

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[2] "A person who is not engaged in an unlawful activity and who is attacked in any other place where he or she has a right to be has no duty to retreat and has the right to stand his or her ground and meet force with force, including deadly force, if he or she reasonably believes it is necessary to do so to prevent death or great bodily harm to himself or herself or another or to prevent the commission of a forcible felony." Okla. Stat. tit. 21, § 1289.25(D) (2009).

the correct standard of review as mandated by *Jackson v. Virginia*, 443 U.S 307, 319 (1979):

> Taken in the light most favorable to the State, evidence was presented at trial to allow any rational trier of fact to find beyond a reasonable doubt the absence of self-defense and the existence of the elements of the lesser-included offense of first-degree manslaughter.

Doc. No. 10-4 at 7-8.

The OCCA considered the entire record and properly accepted the credibility findings of the jury. Considering the amount of evidence elicited at trial, this Court concludes the OCCA's decision is neither contrary to the law set forth in *Jackson v. Virginia*, nor does it demonstrate an unreasonable application of the law to the facts in this case. Thus, habeas relief is not warranted.

C. Ground Three: Right to Present Expert Evidence on Force

Mr. Spruill contends he was denied his opportunity to present a complete defense when the trial court granted the State's motion to exclude John Boren's expert testimony on use of force. Mr. Boren proffered his testimony to the trial court in an *in-camera* hearing on the State's Motion in Limine Tr. 1676-1690. Mr. Boren would have testified that he had examined all the evidence in the case and had conducted experiments, recreating the incident with men approximating the weight and size of Mr. McCray and Mr. Spruill. Mr.

Boren would have testified that it would have been impossible for Mr. Spruill to escape from Mr. McCray. Tr. 1682-1687. The trial court granted the State's Motion in Limine and excluded Mr. Boren's testimony. Relying on state law, the OCCA found the trial court had not abused its discretion in excluding Mr. Boren's testimony. In affirming the decision, the OCCA held the probative value of the evidence was substantially outweighed by the danger of "unfair prejudice, confusion of the issues and misleading the jury." Doc. No. 10-4 at 9.

Generally, admissibility of evidence is a matter of state law for which federal habeas corpus relief is not available. *See Estelle v. McGuire*, 502 U.S. 62, 67–68, (1991); *see also Bullock v. Carver*, 297 F.3d 1036, 1055 (10th Cir. 2002) ("Generally speaking, a state court's misapplication of its own evidentiary rules . . . is insufficient to grant habeas relief."). On habeas review, this Court can review state court evidentiary rulings only "'to determine whether the error was so grossly prejudicial that it fatally infected the trial and denied the fundamental fairness that is the essence of due process.'" *Hooker v. Mullin*, 293 F.3d 1232, 1238 (10th Cir. 2002) (*quoting Williamson v. Ward*, 110 F.3d 1508, 1522 (10th Cir.1997)). In other words, federal habeas relief does not lie for errors of state law absent a determination that the state court's finding was so arbitrary and capricious as to constitute an independent due process violation. *Fields v. Gibson*, 277 F.3d 1203, 1220 (10th Cir. 2002) (*citing Lewis v. Jeffers*, 497 U.S. 764, 780 (1990)). Thus, a habeas petitioner's burden is a

heavy one; he must show that the state's failure to follow its own law is arbitrary in the constitutional sense; that is, it must shock the judicial conscience. *Aycox v. Lytle*, 196 F.3d 1174, 1180 (10th Cir. 1999).

"Because a fundamental-fairness analysis is not subject to clearly definable legal elements, when engaged in such an endeavor a federal court must tread gingerly and exercise considerable self-restraint." *Duckett v. Mullin*, 306 F.3d 982, 999 (10th Cir. 2002) (internal quotation marks and citation omitted). The "[i]nquiry into fundamental fairness requires examination of the entire proceedings, including the strength of the evidence against the petitioner . . . [and] [a]ny cautionary steps—such as instructions to the jury—offered by the court. . . ." *Le v. Mullin*, 311 F.3d 1002, 1013 (10th Cir.2002).

It does not appear that either the trial court or the OCCA misapplied Oklahoma's evidentiary rules in this case. Moreover, the evidence against Mr. Spruill, including the evidence that he was not acting in self-defense, was convincing. Mr. Spruill was a trespasser and the aggressor who came to the scene with a deadly weapon. He testified that he was unable to break Mr. McCray's hold on him. The jury was properly instructed on the law regarding self-defense and the elements of manslaughter. Under these circumstances, the exclusion of John Boren's expert testimony on use of force did not make Mr. Spruill's trial fundamentally unfair. Habeas relief should not be granted on this ground.

RECOMMENDATION

Based on the foregoing findings, it is recommended the Petition for a Writ of Habeas Corpus, brought pursuant to 28 U.S.C. § 2254, be DENIED. The parties are advised of their respective right to file an objection to this Report and Recommendation with the Clerk of this Court by September 19th, 2019, in accordance with 28 U.S.C. § 636 and Fed. R. Civ. P. 72. The failure to timely object to this Report and Recommendation waives appellate review of the recommended ruling. *Moore v. United States of America*, 950 F.2d 656 (10th Cir. 1991); *cf. Marshall v. Chater*, 75 F.3d 1421, 1426 (10th Cir. 1996) ("Issues raised for the first time in objections to the magistrate judge's recommendation are deemed waived.").

This Report and Recommendation disposes of all issues referred to the undersigned Magistrate Judge in the captioned matter. Any motions not specifically ruled on are denied.

ENTERED this 30th day of August, 2019.

/s/ Gary M. Purcell
GARY M. PURCELL
UNITED STATES
MAGISTRATE JUDGE

2018 OK CR 25
IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

ETHAN JOHNSON SPRUILL, **Appellant,**	)	**FOR PUBLICATION**
v.	)	**No. F-2016-629**
STATE OF OKLAHOMA, **Appellee.**	)	

SUMMARY OPINION

(Filed Jul. 19, 2018)

HUDSON, JUDGE:

¶1 Appellant, Ethan Johnson Spruill, was tried by a jury and convicted in Cleveland County District Court, Case No. CF-2014-322, of First Degree Manslaughter, in violation of 21 O.S.2011, § 711(2).[1] The jury recommended as punishment twenty-three (23) years imprisonment. The Honorable Tracy Schumacher, District Judge, sentenced Spruill in accordance with the jury's verdict.[2] Spruill now appeals. He raises the following propositions of error on appeal:

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[1] Appellant was charged and tried for First Degree Murder. Appellant was convicted, however, of the lesser-included offense of First Degree Manslaughter.

[2] Under 21 O.S.2011, § 13.1, Spruill must serve 85% of the sentence imposed before he is eligible for parole.

I. APPELLANT WAS DENIED HIS CONSTITUTIONAL PROTECTIONS AGAINST SELF-INCRIMINATION THROUGH A DELIBERATE EFFORT BY LAW ENFORCEMENT TO OBTAIN AND RECORD INCRIMINATING STATEMENTS FROM AN INTOXICATED, UNSOPHISTICATED SUSPECT, IN VIOLATION OF THE FEDERAL AND STATE CONSTITUTIONS;

II. THE STATE FAILED TO PROVE BEYOND A REASONABLE DOUBT THAT APPELLANT WAS NOT ACTING IN SELF-DEFENSE AT THE TIME HE SHOT AND KILLED AARON MCCRAY, MAKING THE EVIDENCE INSUFFICIENT TO SUPPORT HIS CONVICTION; and

III. THE TRIAL COURT ERRED IN REFUSING TO PERMIT DEFENSE USE-OF-FORCE EXPERT TESTIMONY TO AID AND ASSIST THE JURY IN ITS DETERMINATION OF WHETHER APPELLANT WAS ACTING IN SELF-DEFENSE IN THE SHOOTING INCIDENT.

¶2 After thorough consideration of the entire record before us on appeal, including the original record, transcripts, exhibits and the parties' briefs, we find that no relief is required under the law and evidence. Appellant's Judgment and Sentence is therefore **AFFIRMED**.

I

¶3 The trial court did not abuse its discretion in denying the motion to suppress Appellant's statements. *Johnson v. State*, 2012 OK CR 5, ¶ 11, 272 P.3d 720, 726 (reciting standard of review for motion to suppress); *Mitchell v. State*, 2011 OK CR 26, ¶ 13, 270 P.3d 160, 169 (same). "The Fifth Amendment right [to counsel] arises when one who is in custody is interrogated." *Taylor v. State*, 2018 OK CR 6, ¶ 6, ___ P.3d ___ (citing *Miranda v. Arizona*, 384 U.S. 436, 469-70, 86 S. Ct. 1602, 1625-26, 16 L. Ed. 2d 694 (1966)). "Under *Miranda*, no statement obtained through custodial interrogation may be used against a defendant without a knowing and voluntary waiver of those rights." *Taylor*, 2018 OK CR 6, ¶ 6 (citing *Miranda*, 384 U.S. at 444, 86 S. Ct. at 1612).

¶4 The record shows that Appellant was in custody at the time of his various recorded statements; that Appellant requested the presence of counsel repeatedly starting at the moment he was arrested in front of his apartment; that Appellant's statements were unwarned—that is, authorities never read him the warning mandated by *Miranda*, 384 U.S. at 479, 86 S. Ct. at 1630; and that Appellant refused to sign any waiver indicating that he understood his rights. However, the record also shows that Appellant's statements were not made in response to interrogation from authorities. *See Rhode Island v. Innis*, 446 U.S. 291, 300-01, 100 S. Ct. 1682, 1689-90, 64 L. Ed. 2d 297 (1980) (the term "interrogation" for *Miranda* purposes "refers not only to express questioning, but also to any words

or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect."). Rather, Appellant's statements were volunteered to virtually anyone who would listen while he was at the police department. Volunteered statements of any kind are not barred by the Fifth Amendment. *Miranda*, 384 U.S. at 478, 86 S. Ct. at 1630.

¶5 "Once a suspect in custody has asserted his right to speak only through counsel, all attempts at interrogation must cease. A suspect can, however, change his mind and decide to speak to police without counsel." *Underwood v. State*, 2011 OK CR 12, ¶ 31, 252 P.3d 221, 238 (internal citation omitted). Here, the State met its burden to prove that Appellant's statements were the product of an essentially free and unconstrained choice by Appellant. *Id.*, 2011 OK CR 12, ¶ 33, 252 P.3d at 238. There is no constitutional prohibition to admission of these statements at trial despite Appellant's requests for counsel, *see Frederick v. State*, 2001 OK CR 34, ¶¶ 92-93, 37 P.3d 908, 934, or his intoxication. *Coddington v. State*, 2006 OK CR 34, ¶ 38, 142 P.3d 437, 448. Appellant's argument that he was uninformed of his rights and fearful of authorities when he made these statements is also not supported by the record. Proposition I is denied.

II

¶6 "Self-defense is an affirmative defense which admits the elements of the charge, but offers a legal justification for conduct which would otherwise be criminal." *Davis v. State*, 2011 OK CR 29, ¶ 95, 268 P.3d 86, 114; 21 O.S.2011, § 733. Pursuant to Oklahoma law, a person is justified in using deadly force if a reasonable person in the circumstances and from the defendant's viewpoint would reasonably have believed that he was in imminent danger of death or great bodily injury. *Davis*, 2011 OK CR 29, ¶ 95, 268 P.3d at 114. Appellant maintained, from his arrest through trial, that he acted in self-defense and the district court fully instructed the jury on self-defense. Thus, "the State was obligated to prove, beyond a reasonable doubt, that Appellant did not act in self-defense." *McHam v. State*, 2005 OK CR 28, ¶ 10, 126 P.3d 662, 667.

¶7 The State presented evidence showing that Appellant forced his way inside the victim's apartment after earlier confronting the victim's wife upstairs. The evidence showed Appellant aggressively pounded on the victim's front door while yelling threats and accusing them of abusing their children. The evidence was undisputed that Appellant was intoxicated and had had prior disputes with the victim about noise disturbances. At all times, Appellant was armed with the murder weapon, a fully loaded .38 revolver. True, Appellant testified that he was pulled inside the apartment by the victim. The victim's wife, however, disputed Appellant's version of events. She testified that Appellant stumbled inside the apartment then forcefully resisted

and pushed back when the victim told Appellant to leave and attempted to push Appellant back outside. Appellant's own words to authorities, along with the rest of the State's evidence, showed he was the aggressor who instigated this entire deadly affair.

¶8 Self-defense is not available to an aggressor or one who voluntarily enters into a situation armed with a deadly weapon. *Davis*, 2011 OK CR 29, ¶ 95, 268 P.3d at 115. Nor may self-defense be invoked by one who enters into mutual combat. *West v. State*, 1990 OK CR 61, ¶ 7, 798 P.2d 1083, 1085. We have also held that a trespasser's right to self-defense arises only after the trespasser has availed himself of every reasonable means of escape from the imminent danger of death or great bodily harm. When Appellant refused to leave after being told by the victim, and forcefully resisted the victim's reasonable efforts to push him outside the apartment, Appellant was clearly a trespasser. *Jones v. State*, 2009 OK CR 1, ¶ 66, 201 P.3d 869, 886; *Walston v. State*, 1979 OK CR 69, ¶¶ 6-7, 597 P.2d 768, 770-71.

¶9 The State's evidence established that the victim had an absolute right under these circumstances to defend himself, and his family, using deadly force inside his home. 21 O.S.2011, § 1289.25. "Where there is conflict in the testimony, this Court will not disturb the verdict on appeal if there is competent evidence to support the jury's finding." *Davis*, 2011 OK CR 29, ¶ 83, 268 P.3d at 112. Taken in the light most favorable to the State, sufficient evidence was presented at trial to allow any rational trier of fact to find beyond a reasonable doubt the absence of self-defense and the

existence of the elements of the lesser-included offense of first degree manslaughter. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789, 61 L. Ed. 560 (1979); *Spuehler v. State*, 1985 OK CR 132, ¶ 7, 709 P.2d 202, 203-04. Proposition II is denied.

III

¶10 We review a district court's evidentiary rulings for abuse of discretion. *Cuesta-Rodriguez v. State*, 2010 OK CR 23, ¶ 14, 241 P.3d 214, 224. In this context, an abuse of discretion has been defined as "any unreasonable or arbitrary action made without proper consideration of the relevant facts and law, also described as a clearly erroneous conclusion and judgment, clearly against the logic and effect of the facts." *Cripps v. State*, 2016 OK CR 14, ¶ 4, 387 P.3d 906, 908. Relevant evidence may be excluded under 12 O.S.2011, § 2403 "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, undue delay, needless presentation of cumulative evidence, or unfair and harmful surprise."

¶11 Here, the probative value of John Boren's proposed expert testimony was substantially outweighed by the danger of unfair prejudice, confusion of the issues and misleading the jury. It was also cumulative to evidence already presented. The trial court did not abuse its discretion in disallowing this proposed testimony. Appellant was not deprived of his constitutional right to present a complete defense. 12

O.S.2011, §§ 2401-03; 12 O.S.Supp.2013, § 2702; *Simpson v. State*, 2010 OK CR 6, ¶¶ 9-10, 230 P.3d 888, 895 (and cases cited therein); *Pavatt v. State*, 2007 OK CR 19, ¶ 42, 159 P.3d 272, 286 (and cases cited therein). Proposition III is denied.

DECISION

¶12 The Judgment and Sentence of the district court is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2018), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF CLEVELAND COUNTY THE HONORABLE TRACY SCHUMACHER, DISTRICT JUDGE

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

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

ETHAN JOHNSON SPRUILL, Petitioner - Appellant, v. JEROLD BRAGGS, JR., Warden, Respondent - Appellee.	No. 20-6009 (D.C. No. 5:19-CV-00442-D) (W.D. Okla.)

ORDER

(Filed Oct. 28, 2020)

Before **PHILLIPS**, **MURPHY**, and **McHUGH**, Circuit Judges.

Appellant's petition for rehearing is denied.

The petition for rehearing en Banc was transmitted to all of the judges of the court who are in regular active service. As no member of the panel and no judge

in regular active service on the court requested that the court be polled, that petition is also denied.

Entered for the Court

/s/ Christopher M. Wolpert
CHRISTOPHER M. WOLPERT,
Clerk