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FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

IN THE COURT OF CRIMINAL APPEALS OF
THE STATE OF OKLAHOMA

SEP 17 2020

JOHN D. HADDEN
CLERK

ALEX WARREN KLINGER,

Appellant,

v.

THE STATE OF OKLAHOMA,

Appellee.

) NOT FOR PUBLICATION

) Case No. F-2019-243

SUMMARY OPINION

ROWLAND, JUDGE:

Appellant Alex Warren Klinger was tried by a jury in the District Court of Grady County, Case No. CF-2017-284, and convicted of three counts of Assault and Battery with Deadly Weapon, in violation of 21 O.S.2011, § 652(C), six counts of Shooting with Intent to Kill, in violation of 21 O.S.2011, § 652(A), and one count of Maiming, in violation of 21 O.S.2011, § 751. The Honorable Kory Kirkland, District Judge, presided over Klinger's jury trial and sentenced him, in accordance with the jury's verdicts, to life imprisonment on each

count.¹ Judge Kirkland ordered the sentences to be served consecutively. Klinger appeals raising the following issues:

- (1) whether the State failed to introduce sufficient evidence to overcome its burden of disproving beyond a reasonable doubt his affirmative defense of justifiable use of deadly force in defense of habitation; and
- (2) whether his convictions for both assault and battery with a deadly weapon and maiming offended the protections against double punishment and double jeopardy.

We find relief is not required and affirm the Judgment and Sentence of the district court.

1.

Title 21 O.S.Supp.2014, § 733(A)(1) provides that homicide is justifiable “[w]hen resisting any attempt to murder such person, or to commit any felony upon him, or upon or in any dwelling house in which such person is[.]” To avail himself of this defense Klinger had the burden at trial to show the following:

A person is justified in using deadly force when resisting any attempt by another to commit a felony upon or in any dwelling house in which that person is lawfully present. Defense of habitation is a defense although the danger that a felony would be committed upon or in the

¹ Under 21 O.S.Supp.2014, § 13.1, Klinger must serve 85% of his sentence of imprisonment for his convictions on assault and battery with a deadly weapon and shooting with intent to kill, before he is eligible for parole consideration.

dwelling house may not have been real, if a reasonable person, in the circumstances and from the viewpoint of the defendant, would reasonably have believed that there was an imminent danger that such felony would occur.

OUJI-CR(2d) 8-14.

After a defendant presents enough evidence to raise the claim of defense of habitation, the State must disprove it beyond a reasonable doubt. *Cf. Robinson v. State*, 2011 OK CR 15, ¶ 17, 255 P.3d 425, 432 (Once a defendant presents enough evidence to raise the claim of self-defense, the State must disprove it beyond a reasonable doubt.). We presume that the trier of fact resolved any conflicts in the evidence in favor of the prosecution. *Id.* (citing *McDaniel v. Brown*, 558 U.S. 120, 132-33 (2010)). In the present case, the trial court found that Klinger presented sufficient evidence to raise the claim and the jury was instructed accordingly. The jury did not find that Klinger was justified in using deadly force in defense of habitation and he argues on appeal that the State's evidence was insufficient to disprove his defense of defense of habitation beyond a reasonable doubt.

While the evidence presented at trial was conflicting, there was substantial evidence disproving Klinger's claim that he acted

justifiably in defense of habitation. This evidence refuted Klinger's assertion that he did not know that the people attempting to enter his house were the police and that he reasonably believed that there was an imminent danger that a felony would occur upon or in his dwelling because people attempting to enter his house were there to do him harm. From the evidence presented at trial, the jury could have found beyond a reasonable doubt that Klinger did not shoot at the police in defense of habitation upon the reasonable belief that intruders were attempting to commit a felony upon or in his house. This proposition is without merit.

2.

Klinger complains his convictions for assault and battery with a deadly weapon (Count 1) and maiming (Count 11) violate the statutory prohibition against double punishment and the state and federal constitutional prohibitions against double jeopardy. He argues both convictions arose from a single act of violence against a single victim. Klinger filed a pretrial motion to dismiss either Count 1 or Count 11 on these grounds and, after this motion was denied, he objected again at trial. Accordingly, we review the trial court's

ruling for an abuse of discretion. *Sanders v. State*, 2015 OK CR 11, ¶ 4, 358 P.3d 280, 283.

Title 21 O.S.2011, § 11 governs multiple punishments for a single criminal act and provides in relevant part that:

[A]n act or omission which is made punishable in different ways by different provisions of this title may be punished under any of such provisions, . . . but in no case can a criminal act or omission be punished under more than one section of law; and an acquittal or conviction and sentence under one section of law, bars the prosecution for the same act or omission under any other section of law.

A Section 11 analysis focuses on the relationship between the crimes. *Barnard v. State*, 2012 OK CR 15, ¶ 27, 290 P.3d 759, 767. “If the offenses at issue are separate and distinct, requiring dissimilar proof, Oklahoma’s statutory ban on ‘double punishment’ is not violated.” *Sanders*, 2015 OK CR 11, ¶ 6, 358 P.3d at 283. However, “[i]f the crimes truly arise out of one act, Section 11 prohibits prosecution for more than one crime, absent express legislative intent.” *Barnard*, 2012 OK CR 15, ¶ 27, 290 P.3d at 767. Under the fact of this case, we find that the trial court’s ruling was not an abuse of discretion.

Finding no violation of Section 11, we conduct a traditional double jeopardy analysis. *See Logsdon v. State*, 2010 OK CR 7, ¶ 19, 231 P.3d 1156, 1165; *Head v. State*, 2006 OK CR 44, ¶ 15, 146 P.3d 1141, 1146. This Court applies the test set out in *Blockburger v. United States*, 284 U.S. 299, 304, (1932), to evaluate constitutional claims of double jeopardy. *Watts v. State*, 2008 OK CR 27, ¶ 16, 194 P.3d 133, 139. Under the *Blockburger* test, this Court asks whether each offense requires proof of an additional fact that the other does not. *Watts*, 2008 OK CR 27, ¶ 16, 194 P.3d at 139. The elements test is easily met in this case because Klinger's conviction for maiming requires elements different from the crime of assault and battery with a deadly weapon. *See* 21 O.S.2011, § 652(C); 21 O.S.2011, § 751. As his convictions are based upon crimes that are separate and distinct requiring dissimilar proof, there is no constitutional double jeopardy violation here. Relief is not required.

DECISION

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. (2020), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

**AN APPEAL FROM THE DISTRICT COURT OF GRADY COUNTY
THE HONORABLE KORY KIRKLAND, DISTRICT JUDGE**

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OPINION BY: ROWLAND, J.

LEWIS, P.J.: Concur in Results
KUEHN, V.P.J.: Concur
LUMPKIN, J.: Concur
HUDSON, J.: Concur