

Appendix A

FILED
COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

JOHN D. HADDEN
CLERK

Respondent.

ORDER AFFIRMING DENIAL OF APPLICATION
FOR POST-CONVICTION RELIEF

In a March 4, 2024 order the Honorable Mark D. Uptegrove, Special Judge, found that Petitioner's claims were procedurally barred because he has previously filed an application for post-conviction relief in this case which was denied by the District Court

and affirmed on appeal to this Court. *See Reed v. State*, No. PC-2023-320 (Okla. Cr. May 9, 2023)(not for publication). We agree.

Petitioner was fully afforded the opportunity for post-conviction relief in his previous application. Petitioner has failed to establish entitlement to any relief in this subsequent post-conviction proceeding. “In the interests of efficiency and finality, our judicial system employs various doctrines to ensure that issues are not endlessly re-litigated.” *Smith v. State*, 2013 OK CR 14, ¶ 14, 306 P.3d 557, 564. All issues that were previously raised and ruled upon in direct appeal proceedings or previous post-conviction proceedings are barred as res judicata, and all issues that could have been raised in those previous proceedings but were not are waived, and may not be the basis of a subsequent post-conviction application. 22 O.S.2011, § 1086; *Fowler v. State*, 1995 OK CR 29, ¶ 2, 896 P.2d 566, 569. Post-conviction review is not an opportunity for a second chance to argue claims of error in hopes that doing so in a different proceeding may change the outcome. *Turrentine v. State*, 1998 OK CR 44, ¶ 12, 965 P.2d 985, 989. “Simply envisioning a new method of presenting an argument previously raised does not avoid the procedural bar.” *McCarty v. State*, 1999 OK CR 24, ¶ 9, 989 P.2d 990,

995. "Appellate jurisprudence was not created or designed to allow a person convicted of a crime to continually challenge a conviction with new assertions of error." *Mayes v. State*, 1996 OK CR 28, ¶ 14, n.3, 921 P.2d 367, 372, n.3.

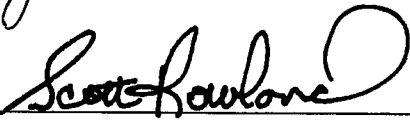
Petitioner's propositions of error either were or could have been raised in his previous application for post-conviction relief, and are thus barred by res judicata or waived. 22 O.S.2011, § 1086; *Fowler*, 1995 OK CR 29, ¶ 2, 896 P.2d at 569. He has not established any sufficient reason for not asserting or inadequately raising his current grounds for relief in his previous application for post-conviction relief. *Id.* Therefore, the order of the District Court of McCurtain County denying Petitioner's subsequent application for post-conviction relief in Case No. CF-2006-581 should be, and is hereby, **AFFIRMED**.

Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2024), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this


8th day of July, 2024.




SCOTT ROWLAND, Presiding Judge



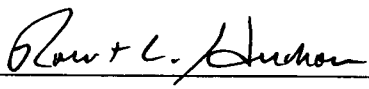
WILLIAM J. MUSSEMAN, Vice Presiding Judge



GARY L. LUMPKIN, Judge

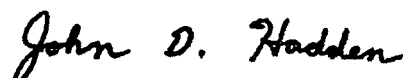


DAVID B. LEWIS, Judge



ROBERT L. HUDSON, Judge

ATTEST:



Clerk

PA

Appendix B

COURT CLERK'S OFFICE
County of McCurtain, State of Oklahoma
FILED
MAR 04 2024
KATHY G

STATE OF OKLAHOMA

Case No. CRF-06-581

COURT OF CRIMINAL APPEALS

MA-2024-104

ORDER DENYING SUBSEQUENT POST CONVICTION RELIEF

On January 18, 2023, Petitioner filed a subsequent (second) application for post-conviction relief alleging 5 propositions: Petitioner asserts his claims in his first application for post-conviction relief were inadequately raised because he failed to bring them under ineffective assistance of appellate counsel. (*application page 2*) However, of the Petitioner's 5 alleged propositions only 2 raise the issue of

ineffective assistance of appellate counsel. "All claims which could have previously been raised but were not, are waived, and all claims which were raised in a direct appeal or in previous post-conviction proceedings are barred as *res judicata*. 22 O.S.1991, § 1086 ; *Fowler v. State*, 1995 OK CR 29, ¶ 2, 896 P.2d 566, 569. Such claims may not be the basis of a post-conviction application. *Id.*" *King v. State*, 2001 OK CR 22.

Proposition 1

"Petitioner receiving Ineffective Assistance of Counsel on Direct Appeal In violation of the Sixth Amendment of the U. S. Constitution and the Supreme Court ruling in *Strickland v. Washington* 466 U.S. 668 (1984) for failing to bring forth the following Prosecutorial Misconduct."

The Court finds the petitioner has previously raised the issue of ineffective assistance of appellate counsel as well as prosecutorial misconduct in his first application for post- conviction relief. In petitioner's first application for post-conviction relief, propositions 1-4 relief raised the issue of ineffective assistance of appellate counsel and propositions 3 and 5 specifically, raised the issue of Mrs. Hollingsworth's testimony. All 5 propositions were denied by the Honorable Judge Gary Brock. Proposition 1 is barred by *res judicata*. *King v. State*, 2001 OK CR 22.

Relief Denied

Proposition 2

"Petitioner received Ineffective Assistants of Counsel on Direct Appeal in Violation of the Sixth Amendment of the U.S. Constitution and the Supreme Court ruling in Strickland v. Washington 466 U.S. 668 (1984) for failing to Bring forth the following Ineffective of Assistance of Trial Counsel."

The Court finds the petitioner has previously raised the issue of ineffective assistance of appellate counsel in his first application for post- conviction relief. In petitioner's first application for post-conviction relief, propositions 1-4 raised the issue of ineffective assistance of appellate counsel. Proposition 3 specifically related to the failure of appellate counsel to investigate and impeach Patricia Hollingsworth. All 4 propositions were denied by the Honorable Judge Gary Brock. Proposition 2 is barred by *res judicata*. *King v. State*, 2001 OK CR 22.

Relief Denied

Proposition 3

"Police Officers violated Petitioners 4th amendment right to be free from illegal search and seizure and 14th amendment right to equal treatment of law when they arrested Petitioner without probable cause when they withheld evidence out of the affidavit to arrest without a warrant." The Court finds, Petitioner offers no grounds as to why this issue was not previously asserted on direct appeal or in his

prior application for post-conviction relief. Proposition 3 is waived *King v. State*, 2001 OK CR 22.

Relief Denied

Proposition 4

"Petitioner is Innocent of this crime because this Justifiable homicide falls into a "Perfect Self-defense" situation and under the rule of substantive law Petitioner is guilty of NO Crime, Not Murder or Manslaughter"

The Court finds, Petitioner has previously raised the issue of self-defense on direct appeal and in his first application for post-conviction relief. Proposition 4 is barred by *res judicata*. *King v. State*, 2001 OK CR 22.

Relief Denied

Proposition 5

"This Court is without Jurisdiction in this Case because Oklahoma's "Stand Your Ground" law Places him outside the Jurisdiction of the State to Prosecute If the statutory elements are met under Oklahoma's "Stand Your Ground" Law 21 O.S. § 1289.25(D)"

The Court finds, Petitioner has previously raised the issue of self-defense on direct appeal and in his first application for post-conviction relief. As to the specificity of 21 O.S. §1289.25(D) the petitioner offers no grounds as to why this

issue was not previously asserted. Proposition 5 is waived/barred by *res judicata*.

King v. State, 2001 OK CR 22.

Relief Denied


For the reasons set forth above the Petitioner's subsequent application for post-conviction relief is denied.

Petitioner's request for attorney and evidentiary hearing are denied.

The Court Clerk is directed to immediately forward a certified copy of this decision to the Oklahoma Court of Criminal Appeals and to the petitioner.

IT IS SO ORDERED.

Dated March 4, 2024



Mark D. Uptegrove
Special District Judge

CERTIFICATE OF MAILING

This is to certify that on 4th day of March, 2024, a true and correct copy of the above Order was mailed with proper postage affixed to the following:

John D. Hadden
Clerk of the Court of Criminal Appeals
Room B-2 State Capitol Building
2300 N. Lincoln Boulevard
Oklahoma City, Oklahoma 73105

Mark Matloff, District Attorney
McCurtain County Courthouse
Idabel, Oklahoma 74745

Chad William Reed
DOC #584428
5-H-2-S
L.A.R.C.
P.O. Box 260
Lexington, OK 73051

Barbara A. Burden

Appendix C

C. Baker
Clond

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

CHAD WILLIAM REED,

Appellant,

v.

THE STATE OF OKLAHOMA,

Appellee.

RECEIVED

Not for Publication

SEP 21 2009

Case No. F-2008-449 ATTORNEY GENERAL

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

SEP 21 2009

MICHAEL S. RICHIE
CLERK

SUMMARY OPINION

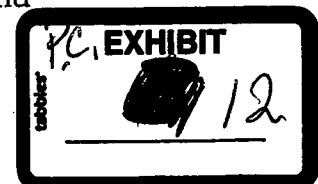
CHAPEL, JUDGE:

Chad William Reed was tried by jury and convicted of Murder in the First Degree in violation of 21 O.S.Supp.2006, § 701.7, in the District Court of McCurtain County, Case No. CF-2006-581. In accordance with the jury's recommendation the Honorable Gary Brock sentenced Reed to life imprisonment with the possibility of parole. Reed appeals from this conviction and sentence.

Reed raises seven propositions of error in support of his appeal:

- I. The evidence was insufficient to prove the malice aforethought element of first degree murder;
- II. The evidence was insufficient to support first-degree murder because the State failed to prove that Reed was not acting in self-defense;
- III. Irrelevant and inconsistent instructions, coupled with the prosecutor's misleading argument, erroneously conveyed to the jury that Reed was not legally entitled to act in self-defense;
- IV. Reed was denied his constitutional right to confront witness Wyva Clouse regarding her pending cases and any favorable treatment received by her in exchange for her testimony and witness Judy Rutherford regarding her prior arrest and any favorable treatment received by her in exchange for her testimony;
- V. The prosecutor's exhibition of irrelevant and prejudicial photographs during the trial, and their admission into evidence, caused reversible error;
- VI. The trial court erred in denying the motion for new trial; and

(34)



VII. The cumulative effect of all errors deprived Reed of a fair trial.

After thorough consideration of the entire record before us on appeal, including the original record, transcripts, exhibits and briefs, we find that no relief is required under the law and evidence. We find in Proposition I that, taking the evidence in the light most favorable to the State, any rational trier of fact could find beyond a reasonable doubt that Reed shot the victim intending to kill her.¹ We find in Proposition II that, taking the evidence in the light most favorable to the State, any rational trier of fact could find beyond a reasonable doubt that Reed did not shoot Hendrix in self-defense.² We find in Proposition III that the trial court did not abuse its discretion in giving the uniform jury

¹ *Dodd v. State*, 2004 OK CR 31, 100 P.3d 1017, 1041-42. Malice means the deliberate intent to take a human life and may be formed in an instant. *Coddington v. State*, 2006 OK CR 34, 142 P.3d 437, 455; *Black v. State*, 2001 OK CR 5, 21 P.3d 1047, 1062; *Ullery v. State*, 1999 OK CR 36, 988 P.2d 332, 347. Malice may be proved by circumstantial evidence. *Coddington*, 142 P.3d at 455; *Black*, 21 P.3d at 1062-63. This Court accepts the finder of fact's reasonable inferences and credibility choices which support the verdict. *Coddington*, 142 P.3d at 455. Sufficient evidence showed Reed intended to kill Hendrix. Reed brought his loaded gun into the house. Hollingsworth testified that she heard Hendrix threaten Reed and immediately heard a gunshot. The shot was fired by Reed, who told her to call 911 because he'd shot Hendrix. Hollingsworth testified that Reed displayed no emotion, did not appear to her to be in shock, and did not go near Hendrix to check on her condition. Clouse testified Reed had recently said he wanted to shoot Hendrix in the head.

² *Dodd*, 100 P.3d at 1042-42. A person acts in self-defense when he has a reasonable ground to believe deadly force is necessary to protect himself from imminent danger of death or great bodily harm. 21 O.S.2001, § 733; OUJI-CR (2d) 8-46; *McHam v. State*, 2005 OK CR 28, 126 P.3d 662, 667. The defendant's belief must be reasonable; fear or a defendant's good faith belief will not justify the taking of a life. *Hancock v. State*, 2007 OK CR 9, 155 P.3d 796, 813; *Camron v. State*, 1992 OK CR 17, 829 P.2d 47, 51. Once a defendant has raised self-defense, the State must prove beyond a reasonable doubt that he was not acting in self-defense. *Hancock*, 155 P.3d at 813. Testimony suggested premeditation, and that Reed often argued with the victim. Hollingsworth testified that Reed's shot came immediately after Hendrix's threat. This is inconsistent with Reed's claim that Hendrix threatened him, pulled her gun, tried to shoot, took the safety off and aimed again before he shot her. Hendrix's gun was underneath her body, at the small of her back, and testimony indicated it was not moved during medical procedures. After shooting Hendrix Reed neither expressed emotion nor checked on her welfare. While the evidence was conflicting, the jury could find beyond a reasonable doubt that Reed did not act in self-defense.

instructions on self-defense;³ we further find that those instructions are not internally inconsistent.⁴ We also find in Proposition III that, as the instructions were accurate and the evidence conflicted as to who was the aggressor, the prosecutor did not misstate the law in argument.

We find in Proposition IV that the trial court did not abuse its discretion in finding that the prior arrest or pending cases of two witnesses were not relevant to bias.⁵ We find in Proposition V that the trial court did not abuse its discretion in admitting photographs which showed the nature and extent of Hendrix's wounds and corroborated the medical testimony.⁶ We find in Proposition VI that the trial court did not abuse its discretion in denying Reed's motion for a new trial based on newly discovered evidence.⁷

³ *Jones v. State*, 2009 OK CR 1, 201 P.3d 869, 886. Self-defense is not available to an aggressor. *Hancock*, 155 P.3d 796, 819. This includes a person who by provocative behavior initiates a confrontation without intending to kill the other person. *Allen v. State*, 1994 OK CR 13, 871 P.2d 79, 93. The jury heard conflicting evidence as to who was the aggressor. Where that issue is disputed, the jury should resolve the question after receiving the appropriate instructions. *Hancock*, 155 P.3d at 819; *Keith v. State*, 1985 OK CR 150, ¶ 17, 709 P.2d 1066, 1070.

⁴ OUJI-CR (2d) 8-53 states that the use of words alone cannot make a person an aggressor, but that a person is an aggressor who "by his wrongful acts provokes, brings about or continues an altercation." This clearly tells jurors that an act, not words, are required.

⁵ The extent of questioning is left to the discretion of the trial court. *Scott v. State*, 1995 OK CR 14, 891 P.2d 1283, 1294. The defendant may cross-examine witnesses on prior arrests and convictions which are relevant to the witness's bias, but this determination is initially also left to the trial court's discretion. *Livingston v. State*, 1995 OK CR 68, 907 P.2d 1088, 1092-93; *Scott*, 891 P.2d at 1294; *Beck v. State*, 1991 OK CR 126, 824 P.2d 385, 389. The trial court must determine whether the evidence allegedly creating bias is relevant, whether it is otherwise admissible, and whether it should be excluded as too prejudicial even if admissible. *Livingston*, 907 P.2d at 1093. The record does not support Reed's claim that either Rutherford's arrest and deferred charge for bad checks, or Clouse's pending criminal cases in Texas, were relevant to show bias in this case.

⁶ *Livingston*, 907 P.2d at 1094. Contrary to Reed's argument, the photographs were not admitted to show the victim's general appearance while alive. 12 O.S.Supp.2003, § 2403 has no relevance to this issue.

⁷ In determining whether to grant a new trial based on newly discovered evidence, the trial court and this Court must consider: (1) whether the evidence is material; (2) whether it could not have been discovered before trial with reasonable due diligence; (3) whether it is cumulative; and (4) whether it creates a reasonable probability that, had it been introduced at

We find in Proposition VII that, as there was no error in the preceding propositions, there is no cumulative error.⁸

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. (2009), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

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OPINION BY: CHAPEL, J.

C. JOHNSON, P.J.:	CONCUR
A. JOHNSON, V.P.J.:	CONCUR
LUMPKIN, J.:	CONCUR IN RESULTS
LEWIS, J.:	CONCUR

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ATTORNEYS FOR RESPONDENT

trial, it would have changed the outcome. *Ellis v. State*, 1992 OK CR 45, 867 P.2d 1289, 1303. Reed completely fails to show that the evidence could not have been discovered before trial. Arguably this evidence would have been relevant to show Clouse was biased against Reed. As it reflects a financial motive and thus differs in kind from the other evidence Reed used to impeach Clouse, it would not have been cumulative. However, the record does not support Reed's claim that this evidence creates a reasonable probability that the outcome of the trial would have changed. It is inconsistent with the facts surrounding Clouse's testimony. Clouse never approached law enforcement and was not contacted by them until several months after Reed's arrest. If she had the financial motive to testify against Reed suggested by the affidavit, she arguably would have come forward much sooner. In addition, jurors could have wholly disregarded Clouse's testimony, reviewed the other evidence, and found beyond a reasonable doubt that Reed shot the victim intending to kill her.

⁸ *Alverson v. State*, 1999 OK CR 21, 983 P.2d 498, 520.