IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

WILLIAM BUCK RODGERS,   )
)
       Appellant,   )   NOT FOR PUBLICATION
)
v.   )   Case No. F-2014-427
)
THE STATE OF OKLAHOMA,   )
)
       Appellee.   )

SUMMARY OPINION

JOHNSON, JUDGE:

Appellant William Buck Rodgers was tried by jury in the District Court of Creek County, Case No. CF-2012-396, and convicted of First Degree Murder (Malice Aforethought), in violation of 21 O.S.2011, § 701.7(A). The jury assessed punishment at life imprisonment with the possibility of parole. The Honorable Douglas W. Golden, District Judge, who presided at trial, sentenced Rodgers accordingly.[1] From this Judgment and Sentence, Rodgers appeals raising the following issues:

(1)   whether he was immune from prosecution under the Stand Your Ground law;

(2)   whether the district court should have sustained his demurrer and/or motion for a directed verdict;

(3)   whether the district court erred when it failed to admonish the jury to disregard an irrelevant and prejudicial statement;

(4)   whether he was denied his Sixth Amendment Right to Confrontation;

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

(5) whether the trial court abused its discretion in allowing the State to introduce improper expert testimony;

(6) whether the trial court erred in failing to give an instruction on exculpatory statements;

(7) whether the trial court erred in failing to give a complete jury instruction on the Stand Your Ground law;

(8) whether he was denied his constitutional right to the effective assistance of counsel;

(9) whether the cumulative effect of the errors denied him a fair trial; and

(10) whether the evidence was sufficient to find he was not acting under the protection of the "stand your ground defense" or acting in self-defense as a matter of law.

Rodgers also submits an application for evidentiary hearing on his Sixth Amendment claims.

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

1.

Title 21 O.S.2011, § 1289.25(G) provides that a person who uses force as permitted by sections 1289.25(B)&(D) is immune from prosecution. If, however, a defendant believes he or she is entitled immunity under section 1289.25, the claim of immunity must be asserted before trial opens or a dispositive plea is entered. Rodgers waited too long to claim immunity and the matter is waived. *See State v. Jones*, 298 Kan. 324, 329-334, 311 P.3d 1125, 1130-1133 (Kan. 2013).

2.

Rodgers waived his right to appeal the trial court's ruling on his demurrer by presenting evidence after the State rested its case. *Hancock v. State*, 2007 OK CR 9, ¶ 57, 155 P.3d 796, 811; *Young v. State*, 2000 OK CR 17, ¶ 34, 12 P.3d 20, 35.

3.

Although the trial court should have admonished the jury to disregard evidence which was irrelevant when introduced, Rodgers suffered no prejudice from this error because the evidence became relevant after the defense presented its case-in-chief and would therefore have been admissible in rebuttal. Error in the premature introduction of this evidence was harmless; no relief is required.

4.

Rodgers was not denied his Sixth Amendment right to Confrontation by the State's failure to call at trial a witness it had called to testify at preliminary hearing. This witness testified at preliminary hearing and was subject to cross examination. *Crawford v. Washington*, 541 U.S. 36, 68, 124 S.Ct. 1354, 1374, 158 L.Ed.2d 177 (2004).

5.

The trial court did not abuse its discretion in finding that Sheriff John Davis was qualified by his training and experience to give an opinion regarding the trajectory of the bullet that killed Travis and other aspects of the crime

scene. *Warner v. State,* 2006 OK CR 40, ¶ 22, 144 P.3d 838, 860; 12 O.S.2011, § 2704. Furthermore, Davis' testimony was not an improper opinion telling the jury what result to reach but was based upon his qualifications and experience and assisted the trier of fact to understand the evidence. There was no plain error in the admission of this testimony.

6.

The trial court did not abuse its discretion in declining to give his requested instruction on exculpatory statements as such instruction was not warranted by the evidence. *Kinchion v. State,* 2003 OK CR 28, ¶ 14, 81 P.3d 681, 685.

7.

There was no plain error in the trial court's failure to, *sua sponte,* give the complete Stand Your Ground instruction. *Grissom v. State,* 2011 OK CR 3, ¶ 28, 253 P.3d 969, 980. The instruction given accurately stated the applicable law. *Barnard v. State,* 2012 OK CR 15, ¶ 20, 290 P.3d 759, 766.

8.

Rodgers argues defense counsel rendered constitutionally ineffective assistance at trial by committing several unprofessional errors. Rodgers has not shown a reasonable probability that but for counsel's alleged unprofessional errors, the result of the proceeding would have been different.

See Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674 (1984); *Malone v. State,* 2013 OK CR 1, ¶ 14, 293 P.3d 198, 206.

Rodgers filed an Application for Evidentiary Hearing on Sixth Amendment Claims contemporaneously with his appellate brief and attached supporting affidavits. This Court will order an evidentiary hearing if "the application and affidavits . . . contain sufficient information to show this Court by clear and convincing evidence [that] there is a strong possibility trial counsel was ineffective for failing to utilize or identify the complained-of evidence." Rule 3.11(B)(3)(b)(i), *Rules of the Oklahoma Court of Criminal Appeals,* Title 22, Ch. 18, App. (2015). Having reviewed Rodgers' request for an evidentiary hearing to develop this claim and the materials offered to support that request, we find that he has failed to meet his burden. Rule 3.11, *Rules of the Oklahoma Court of Criminal Appeals,* Title 22, Ch. 18, App. (2015). Rodgers is not entitled to an evidentiary hearing to further develop his ineffective assistance of counsel allegations, and his motion, as well as this claim, is denied. *See Simpson v. State,* 2010 OK CR 6, ¶ 53, 230 P.3d 888, 905-06.

9.

There are no errors, considered individually or cumulatively, that merit relief in this case. *Jones v. State,* 2009 OK CR 1, ¶ 104, 201 P.3d 869, 894; *DeRosa v. State,* 2004 OK CR 19, ¶ 100, 89 P.3d 1124, 1157. This claim is denied.

The evidence presented at trial was sufficient for a rational juror to conclude beyond a reasonable doubt that Rodgers did not act under the protections of the Stand Your Ground law or in self-defense when he shot and killed Travis. The evidence was sufficient for any rational trier of fact to find beyond a reasonable doubt that Rodgers committed the crime of First Degree Murder. *See Logsdon v. State*, 2010 OK CR 7, ¶ 5, 231 P.3d 1156, 1161; *Spuehler v. State*, 1985 OK CR 132, ¶ 7, 709 P.2d 202, 203-204.

DECISION

The Judgment and Sentence of the district court is **AFFIRMED**. The Application for Evidentiary Hearing on Sixth Amendment Claims is **DENIED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2015), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF CREEK COUNTY
THE HONORABLE DOUGLAS W. GOLDEN, DISTRICT JUDGE

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

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