IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

MATTHEW ALLEN KUPCZYNSKI,	
Petitioner,	
v.	**No. PR-2017-333**
THE HONORABLE GLENN M. JONES, DISTRICT JUDGE, DISTRICT COURT OF OKLAHOMA COUNTY, STATE OF OKLAHOMA,	
Respondent.	

ORDER DENYING PETITION FOR WRIT OF PROHIBITION

On April 4, 2017, Petitioner Kupczynski, by and through counsel James L. Hankins and John Hunsucker, filed a Petition for Writ of Prohibition in Oklahoma County Case No. CF-2015-1749. Kupczynski seeks a writ of prohibition directing the District Court of Oklahoma County, the Honorable Glenn M. Jones, District Judge, to stay proceedings and grant a continuance in his trial, scheduled for April 4, 2017, alleging that the untimely receipt of relevant discovery materials has resulted in prejudice to Kupczynski's right to prepare his case for trial and present a defense. Kupczynski seeks waiver of this Court's 10 day rule alleging that the relevant materials were not received until March 30, 2017 at 4:30 p.m., five days prior to trial.

Petitioner's Petition for Writ of Prohibition is **DENIED.**

The facts, as set forth in this order, are taken from the pleadings and record filed with this Court in this matter. On March 10, 2015, Kupczynski was charged with several offenses relating to a fatality automobile accident which

occurred December 1, 2014. The State's Third Amended Information, filed November 5, 2015, ultimately charged Kupczynski with Count 1, First Degree Manslaughter while in the commission of a misdemeanor or alternatively while in the commission of reckless driving; Count 2, Causing an Accident while Driving a Vehicle without a License; Count 3, Driving Left of the Center Line; and Count 4, Possession of a Controlled Dangerous Substance. Trial continuances have been granted on at least five prior occasions.

Kupczynski alleges that part of his trial strategy was to criticize the State's accident investigation as inadequate and incomplete, and therefore insufficient to support the charges filed. Defense counsel alleges that an expert was hired to review the provided discovery to critique the State's evidence supporting its claims against Kupczynski. On March 30, 2017, five days prior to trial, defense counsel alleges the State provided an additional 6 pages of accident report data and 88 additional photographs which counsel claims are critical to its challenge to the State's accident investigation, and the defense strategy to indict the accident reconstruction. Kupczynski alleges that the late receipt of this information denied him the opportunity to hire an accident reconstruction expert[1] and "guts our defense". The fact that the State's investigation was incomplete, Kupczynski argues, was a key aspect to the defense trial strategy.

[1] Kupczynski alleges that his previously hired reconstruction expert opined that there was insufficient information provided by the State's investigation to form a conclusion on accident reconstruction, specifically citing the lack of underlying data, measurement and photos.

Receipt of additional photos and accident data at this late date has compromised that aspect of the defense strategy and places Kupczynski at a disadvantage.

On April 3, 2017, a hearing was conducted on Kupczynski's Motion to Dismiss or in the Alternative Motion for Continuance, filed March 31, 2017. After hearing argument of the parties, the District Court of Oklahoma County, the Honorable Glenn M. Jones, District Judge, denied Kupczynski's motion. The court allowed the State to amend the charges, specifically to dismiss the alternative reckless driving charge in Count 1; to amend Count 2 to eliminate the reference to reckless driving; and to dismiss Count 3 in its entirety. Judge Jones also limited the use of some of the additional information provided on March 30, 2017, and any references to the same. The court denied Kupczynski's request to stay proceedings, his motion to dismiss and his motion for continuance.

For a writ of prohibition, Petitioner must establish (1) a court, officer or person has or is about to exercise judicial or quasi-judicial power; (2) the exercise of said power is unauthorized by law; and (3) the exercise of said power will result in injury for which there is no other adequate remedy. Rule 10.6(A), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2017).

Kupczynski has not established that he has suffered an injury for which there is no other adequate remedy. The district court has issued limiting instructions with regard to at least a portion of the new materials, and the State has amended several of the counts to eliminate the charges, limiting, to

some extent, the introduction of these alleged new materials. Additionally, Kupczynski has not yet been convicted of any offense, and in the event he is convicted, his claim, if properly preserved, can be appealed to this Court at that time.

Kupczynski's request for writ of prohibition is **DENIED.**

The Clerk of this Court is directed to transmit a copy of this order to the Court Clerk of Oklahoma County; the District Court of Oklahoma County, the Honorable Glenn M. Jones, District Judge; Petitioner; and all counsel of record.

IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 4th day of April, 2017.

GARY L. LUMPKIN, Presiding Judge

DAVID B. LEWIS, Vice Presiding Judge

Arlene Johnson

ARLENE JOHNSON, Judge

Clancy Smith

CLANCY SMITH, Judge

ROBERT L. HUDSON, Judge

ATTEST:

Clerk

OA/F