

IN THE DISTRICT COURT OF THE TWENTY-THIRD JUDICIAL DISTRICT
SITTING WITHIN AND FOR LINCOLN COUNTY
STATE OF OKLAHOMA

The State of Oklahoma,)
)
 Plaintiff,)
)
 vs.)
)
 Joshua D. Stump,)
)
 Defendant.)

FILED

MAR 7 1996

CF-95-104

Linda Siler, Cl. Clk. Lincoln Co. Okla.
By MM Deputy

RESPONSE TO DEFENDANT'S MOTION
TO QUASH THE INFORMATION

COMES now Barney K. Barnett, Assistant District Attorney for Lincoln County and in response to Defendant's Motion to Quash the Information states as follows:

Defendant alleges the Information in this cause is defective for two reasons. First he alleges the Information charges him with two different theories of Murder (Proposition I); and second that the Information fails to allege elements of "malice" murder (Proposition II).

The two pertinent parts of 21 O.S. § 701.7 are sections (A) and (B). Sub section (A) deals with "malice aforethought" murders, which defines malice as a ". . . deliberate intention unlawfully to take away the life of a human being . . ." Sub section (B) deals with other types of first degree murder where "A person . . . takes the life of a human being, regardless of malice, in the commission of . . . (listed felony offenses)." (Emphasis added.)

The defendant in this case is charged with felony murder - a homicide committed during the course of an armed robbery, or attempted armed robbery, as set forth in the Information. "The Information should state every material element of the crime charged sufficiently to apprise a defendant of the charges against which he must defend himself." Pickens v. State, 885 P.2d 678 (Okl.Cr. 1994)

Defendant cites Pickens alleging the same error here as the Court found there. This is not the case. The Pickens Information did not allege "malice aforethought" nor did it set forth all the elements of Robbery with a Dangerous Weapon. The Information "charging a defendant with felony murder must recite facts to allege every element of the First Degree Murder statute, 21 O.S. § 701 (B), including facts to allege every element of the underlying felony." Allen v. State 874 P.2d 60,65 (Okl.Cr. 1994) (Emphasis

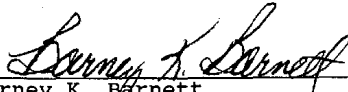
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added). The Pickens Information did not allege all the facts to support an underlying felony as part of the murder charge and is factually distinguishable from this case.

Malice aforethought is simply not an element of felony murder. The Oklahoma Court of Criminal Appeals addressed a similar situation as proposed by defendant in Lambert v. State, 888 P.2d 494 (Okl.Cr. 1994). In that case the Court addressed the sufficiency of the Information and the tests associated with that evaluation (Lambert at 504). In Lambert the defendant was charged with malice aforethought Murder, Kidnapping, Arson and Robbery with Firearms among others. The defendant testified, admitting to the Robbery and Kidnapping but claimed the fire that killed the victim was set by his co-defendant. Over defense objection the jury was instructed on felony murder. The defendant claimed on appeal that had he known the jury would be instructed on felony murder he would never have testified and ". . . never willingly admitted to the jury that he committed a crime which would have resulted in his receiving the death penalty." (Lambert, at 504) The Court agreed and reversed the conviction.

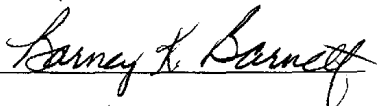
Defendant also complains of language in the Information concerning "premeditated design to effect death". Although premeditation is no longer referred to in 21 O.S. § 701.7 it is still defined at 21 O.S. § 703, "A design to effect death sufficient to constitute murder may be formed instantly before committing the act by which it is carried into execution". See: Freeman v. State, 876 P.2d 283 (Okl.Cr. 1994) "In felony murder prosecutions the underlying felony suffices as proof of intent to take away human life so that the Appellant's premeditated design to effect death was proven when the State established his intent to rob Belden (victim)." (Freeman, at 287) (Emphasis added).

Accordingly for reasons set forth above the State requests the Motion to Quash be overruled.


Barney K. Barnett,
Assistant District Attorney
Lincoln County Courthouse
Chandler, OK 74834
(405) 258-1674

CERTIFICATE OF MAILING

This is to certify that a true and correct copy of the above and foregoing Response to Defendant's Motion to Quash the Information was mailed to James T. Rowan, Attorney for Defendant, Oklahoma Indigent Defense System, Capital Trial Division, 1623 Cross Center, Ditmars, 2nd C21, Norman, Oklahoma 73019, on this 7th day of March, 1996.



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IN THE DISTRICT COURT OF LINCOLN COUNTY

STATE OF OKLAHOMA

FILED

STATE OF OKLAHOMA,)
)
 Plaintiff,)
)
 -vs-)
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 JOSHUA D. STUMP,)
)
 Defendant.)

Case No. CF-95-104

MAR 7 1996
Linda Siler, Ct. Clk. Lincoln Co. Okla-
By DA Deput: J. DODD

ORIGINAL

MOTION FOR CONTINUANCE

COMES NOW the Defendant, Joshua Daniel Stump, and moves this Honorable Court to continue the trial date in this matter from March 25, 1996.

On February 23, 1996, Assistant District Attorney Barney K. Barnett informed the Court and the defense that the State had completed its testing of the physical evidence in this case. An agreement was reached March 5, 1996 concerning the transfer of specific items of evidence to the defense for testing. To date, no transfer has taken place. The defense has requested instructions from the State as to when and where to pick up the items of evidence. No instructions were received.

Independent testing laboratories are businesses which unfortunately get inundated with emergency requests for testing. Defense counsel has been informed that a serological lab would require a minimum of three weeks to complete DNA testing. The same time constraints apply to a ballistics lab. Until the items of evidence can be received and inspected by defense counsel and the results of the latest round of State tests known, defense counsel will not know what tests must be conducted.

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There is not enough time between now and the commencement of trial to complete testing by defense experts. The controlling case is Frederick v. State, 902 P.2d 1092 (Okla. Cr. 1995). In Frederick, the defendant complained that he was forced to trial without the benefit of a competent psychiatrist. The Court of Criminal Appeals agreed and held it was reversible error to deny the defendant's request for a continuance.

In this case, the identity of the shooter is crucial. The serologist and the ballistics expert will be able to shed light on how this tragic homicide occurred. If the Defendant is forced to trial without the benefit of the essential tools of a defense, he will be deprived of due process of law.

WHEREFORE, the Defendant moves this Honorable Court to continue the trial date from March 25, 1996 to a future date which will afford the Defendant time to prepare for trial.

Respectfully submitted,

James T. Rowan
James T. Rowan, OBA #7787
Oklahoma Indigent Defense System
Capital Trial Division
P.O. Box 926
Norman, OK 73070-0926
(405) 329-4272
ATTORNEY FOR JOSHUA D. STUMP

CERTIFICATE OF SERVICE

This is to certify that on this 6th day of March, 1996, a true and correct copy of the above and foregoing instrument was served on the offices of Miles C. Zimmerman, Lincoln County District Attorney, P.O. Box 126, Chandler, Oklahoma 74834, and to the office of Barney K. Barnett, Lincoln County Assistant District Attorney, P.O. Box 126, Chandler, Oklahoma 74834.

James T. Rowan
James T. Rowan

IN THE DISTRICT COURT OF THE TWENTY-THIRD JUDICIAL DISTRICT
SITTING IN AND FOR LINCOLN COUNTY
STATE OF OKLAHOMA

FILED
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The State of Oklahoma,)
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 Plaintiff,)
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 vs.)
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 Joshua Daniel Stump,)
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 Defendant.)

Linda Siler, Clk, Lincoln Co. OK
By LAJ Deput.
Case No. CF-95-104

SUPPLEMENTAL BURKS' NOTICE OF INTENT
TO INTRODUCE EVIDENCE OF SEPARATE
CRIMES AT TRIAL

Comes now, the State of Oklahoma, the Plaintiff herein, and gives the Defendant notice this 6th day of March, 1996, of its intent to offer and introduce evidence of separate crimes, offenses or bad acts, involving said defendant. This evidence may be offered during the course of the State's case in chief, which is set for trial in the District Court of Lincoln County on the 25th day of March, 1996.

Said evidence is expected to be essentially as follows:

That prior to the murder of Kathrina Knight, the defendant Joshua Daniel Stump, engaged in other conduct which may be considered bad acts or criminal offenses, including:

1. Stayed at the home of Clifford Anderson using an assumed name;
2. Assisted or encouraged Robert Anderson, also a juvenile, to run away from home;
3. Assisted or encouraged Robert Anderson in stealing blank checks and credit cards from Clifford Anderson;
4. Assisted or encouraged Robert Anderson in making fraudulent purchases with those checks and credit cards;
5. Assisted or encouraged Robert Anderson in stealing a shotgun from the home of Anderson's parents;
6. Assisted or encouraged Robert Anderson in modifying the stolen shotgun by cutting off the barrel and stocks, making mere possession of the weapon a felony;

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7. Committed an assault and battery with a deadly weapon, or an attempted murder on Hubert Moucha immediately preceding the murder of Kathrina Knight by shooting him in the hand and face with the sawed off shotgun;
8. Failed to report the death of Robert Anderson to proper authorities;

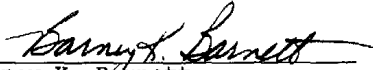
Further the State will introduce evidence that while being held on this charge the defendant, Joshua Daniel Stump, while acting with three (3) other prisoners, attempted to escape from the Lincoln County Jail by overpowering a jailer.

Further the State will, during the second stage of the trial, introduce evidence of the defendant, Joshua Daniel Stump's involvement with firearms as a juvenile, including unadjudicated offenses. These offenses include bringing a handgun to a Prague School; theft of a gun from the foster home he was absent without leave from; bringing a gun into another foster home.

Exception: Absence of mistake, common plan or scheme, flight to avoid prosecution, continued threat to society.


Submitted this 6th day of March, 1996, in compliance with the directives of the Oklahoma Court of Criminal Appeals in its opinion of Burks vs. State 594 P2d 771.

Miles C. Zimmerman,
District Attorney


Barney K. Barnett
Assistant District Attorney
Lincoln County Courthouse
Chandler, OK 74834
(405) 258-1674

CERTIFICATE OF MAILING

This is to certify that a true and correct copy of the above and foregoing Notice was mailed on the 6th day of March, 1996, to James Rowan, Attorney for Defendant, Oklahoma Indigent Defense System, Norman, Oklahoma.


Signature

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The evidence will show that Stump and Anderson had formed a plan to steal property from Moucha and Knight. The evidence will show that Stump and Anderson, along with three females, followed Mr. Moucha to his home from Shawnee, Oklahoma. The evidence will further show that the shotgun used had been stolen from Robert Anderson's parents home and modified by Stump and Anderson.

The evidence will show that Stump and Anderson approached the Moucha residence twice - the first time alleging car trouble, the second when the shootings occurred. The evidence will show further that on the second trip to the residence Anderson asked to use the telephone and when Mr. Moucha opened the door Stump confronted Moucha with the shotgun announcing "This is a robbery motherfucker." The evidence will show that Stump put the shotgun near Mr. Moucha's face and that when Mr. Moucha attempted to deflect the shotgun, Stump fired, causing severe wounds to Mr. Moucha's hand.

The evidence will then show that Stump entered the residence and exchanged fire with Ms. Knight before fleeing the residence. The evidence will further show that Ms. Knight was shot once in the chest at close range with a shotgun, also receiving a large, superficial, wound to her arm. The evidence will show that Mr. Moucha talked to Ms. Knight after she had fallen near him. Mr. Moucha urged her to fire more shots from her pistol which she did, before she collapsed from her wounds.

The totality of the evidence will show that although Ms. Knight died of a single shotgun wound to the chest that she suffered extreme pain and suffering while she was still alive and aware of what was happening to her.

2. THAT THE DEFENDANT KNOWINGLY CREATED A GREAT RISK OF DEATH TO MORE THAN ONE PERSON.

The State of Oklahoma will move to incorporate into the second stage all evidence in the first stage of this trial.

The State will prove that the attack on Hubert Moucha, which preceded the murder of Kathrina Knight, produced serious and potentially fatal wounds and that without prompt medical attention Mr. Moucha could have bled to death. The evidence will further show that as a result of this wound Mr. Moucha's right hand was amputated.

3. THE EXISTENCE OF A PROBABILITY THAT THE DEFENDANT WOULD COMMIT CRIMINAL ACTS OF VIOLENCE THAT WOULD CONSTITUTE A CONTINUING THREAT TO SOCIETY.

The State of Oklahoma will move to incorporate in the second stage all evidence introduced in the first stage of this trial.

To prove this aggravating circumstance the State will rely, in part, on the evidence of the murder of Kathrina Knight and the

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wounding of Hubert Moucha during the above described robbery attempt; particularly the brutal and callous nature of the murder and assault on the two victims. The evidence will further show that both victims were near sixty (60) years of age and were attacked in their own home by Stump and Anderson in an effort to steal property. The evidence will further show that at the time of these shootings neither victim had taken any aggressive action toward Stump or Anderson.

The evidence will also show that the defendant, Joshua Daniel Stump has a history of unadjudicated juvenile offenses involving possession or theft of firearms. Stump was also involved in the theft of a car in Michigan in December of 1994 while absent without leave from a Department of Human Services placement.

The evidence will show that on April 4, 1994, Stump and another juvenile were involved in taking a pistol to Prague School. The evidence will further show that in February, 1995, while in the custody of the Department of Human Services as a deprived child, Joshua Daniel Stump left a foster care home where he had been placed. The evidence will show that shortly after Stump left the foster parent discovered a pistol missing from the home. The evidence will further show that Stump had knowledge of where that pistol was hidden prior to him running away from the home.

The totality of this evidence will show that Joshua Daniel Stump has armed himself on this and other occasions with illegally obtained firearms and that he constitutes a continuing threat to society.

MILES C. ZIMMERMAN, District Attorney

Barney K. Barnett

District Attorney's Office
Lincoln County Courthouse
Chandler, Oklahoma 74834
(405) 258-1674

CERTIFICATE OF DELIVERY

I hereby certify that on this 2nd day of March, 1996, I caused a true and correct copy of the foregoing Notice of Evidence in Aggravation To Be Offered In Support Of Death Penalty to be mailed to James Rowan, Oklahoma Indigent Defense System, Capital Litigation Division, P.O. Box 926, Norman, Oklahoma 73070.

Barney K. Barnett

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