

ORIGINAL

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

FILED

**IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA**

JUL 26 2017

**MICHAEL S. RICHIE
CLERK**

**JEREMY REECE and
TYLER REECE,**



Petitioners,

-vs.-

No. PR-2017-712

**THE DISTRICT COURT OF
OSAGE COUNTY,
HONORABLE TERRY H. McBRIDE,**

Respondent.

**ORDER STAYING FURTHER PRELIMINARY HEARING PROCEEDINGS AND
SETTING DEADLINE FOR COMPLETION OF SUPPORTING RECORD**

On July 12, 2017, Petitioner, Jeremy Reece, through counsel, Peter C. Astor of the Oklahoma Indigent Defense System, and Petitioner, Tyler Reece, through court-appointed counsel, Rodney Ramsey, filed separate Petitions herein seeking extraordinary writs regarding a criminal prosecution pending against each as defendants in *State of Oklahoma v. Jeremy Keith Reece*, Osage County District Court Case No. CF-2015-274A, and *State of Oklahoma v. Tyler Wayne Reece*, Case No. CF-2015-274B. The above-named Respondent, the Honorable Terry H. McBride, sat as Presiding District Judge in review of the State's appeal from an adverse decision of the Honorable Stuart Tate, Special Judge, who presides as Magistrate over the preliminary hearing in Petitioners' cases.

According to Petitioners' pleadings, they were each originally charged as co-defendants with Count 1, Murder in the First Degree-Deliberate Intent, and Count 4, Desecration of Human Corpse. Both such charges arose from the death of Rick Holt occurring in September of 2015. Petitioners state that when the case proceeded to preliminary hearing, Judge Tate as Magistrate, on March 29, 2016, sustained Motions to Dismiss that were filed by Petitioners. Those

Motions asserted that the District Court lacked jurisdiction to proceed on Counts 1 and 4 because the offenses alleged in those two counts occurred on Osage tribal land and both Petitioners were tribal members. The State appealed that decision under 22 O.S.2011, § 1089.1 et seq., with the Magistrate retaining Petitioners on those two charges that were not alleged to have occurred entirely on tribal land, that being Count 2, Conspiracy to Commit Murder, and Count 3, Kidnapping.

On April 11, 2016, Respondent decided the State's appeal by upholding the Magistrate's ruling as to the dismissal of Counts 1 and 4 for lack of jurisdiction, but he further remanded the matter to the Magistrate with instructions that he must allow the State to amend Count 1 of its information to allege felony murder if the State wished to do so. Respondent further held that because evidence was presented to the Magistrate sufficient to support a charge of felony murder, the Magistrate should permit an Amended Information for felony murder and allow the State to proceed against Petitioners accordingly for that offense.¹

The State thereafter filed an Amended Information modifying its Count 1 and alleging that Petitioners committed the offense of Murder in the First Degree-Felony Murder by "shooting [Rick Holt] in the back with a 12-gauge shotgun, during the commission or attempted commission of Burglary in the First Degree at 571 CR 5772, Osage County, Oklahoma, during which they removed Rick Holt forcibly from his home at gunpoint and subsequently shot him on his property." The Amended Information did not re-urge the Count 4

¹ The State initially sought to appeal this April 11th decision by the reviewing judge that affirmed the Magistrate's dismissal of Counts 1 and 4 as alleged, but because the State neglected to properly preserve its appeal to this Court, the proceedings before this Court were dismissed. *State v. Reece*, No. S-2016-324 (Okl.Cr. June 2, 2016) (unpublished).

offense but did maintain the Counts 2 and 3 charges. Again, Petitioners moved to dismiss Count 1 on jurisdictional grounds and the Magistrate, in an order filed on June 2, 2017, sustained that motion based on his previous findings of lack of subject matter jurisdiction and which findings he viewed that Respondent had upheld in the State's previous appeal.

Once more, under 22 O.S.2011, § 1089.1 et seq., the State appealed. In reviewing the Magistrate's latest dismissal order, Respondent, on June 12, 2017, remanded with instructions that the State be permitted to proceed under its Amended Information for Felony Murder. Petitioners assert that the Magistrate's March 29, 2016, order, as was affirmed on appeal concerning its dismissal of Counts 1 and 4 for lack of subject matter jurisdiction, now constitutes a bar to further prosecution of Petitioners for those acts underlying Counts 1 and 4. For this reason, Petitioners are contending before this Court that they are entitled to an extraordinary writ prohibiting the State from further prosecuting them for the murder of Rick Holt.

In support of their Petitions, Petitioners have attached to their pleadings a copy of Respondent's June 12, 2017, order as well as a number of other documents from the trial court proceedings. Included therein is an order directing that a record be compiled of certain items listed by Petitioners as necessary for this Court's review of their writ Petitions. Petitioners ask that they be given an opportunity to submit the ordered records and that this Court "issue an emergency order staying execution of the District Court's judgment and staying all proceedings pending this [original action]." (Pet. at 3.)

Based on the foregoing, the Court **FINDS** that a decision of whether to accept original jurisdiction herein and decide the merits of Petitioner's claims should be postponed, and as set forth below, that further preliminary hearing

proceedings should be stayed until Petitioners can present the desired record in support of their Petitions and until this Court can then review the same, and if deemed necessary, call for a response to the Petitions.

IT IS THEREFORE THE ORDER OF THIS COURT that the court reporter and the Clerk of the District Court of Osage County shall complete the record as Judge Tate has directed in his order of July 11, 2017. The Clerk shall then file with the Clerk of this Court a Notice of Completion within twenty (20) days from the date of this Order, and shall thereafter transmit the record on receipt of a notice requesting transmission.

IT IS THE FURTHER ORDER OF THIS COURT that the pending preliminary hearing proceedings currently scheduled before the Magistrate shall be stayed pending the disposition of Petitioners' writ Petitions or until otherwise ordered by this Court.

The Clerk of this Court is directed to forward copies of this Order to the trial court clerk; to the Honorable Terry H. McBride, Presiding District Judge as Respondent herein; to the Honorable Stuart Tate, Special Judge; to the District Attorney for Osage County; to Peter C. Astor, attorney for Petitioner Jeremy Reece; and to Rodney Ramsey, attorney for Petitioner Tyler Reece.

IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 26th day of July, 2017.



GARY L. LEMPKIN, Presiding Judge



DAVID B. LEWIS, Vice Presiding Judge

NOT PARTICIPATING

ARLENE JOHNSON, Judge

Robert L. Hudson

ROBERT L. HUDSON, Judge

ATTEST:

Michael D. Richie

Clerk

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