

DA 22-0305

IN THE SUPREME COURT OF THE STATE OF MONTANA

2024 MT 215

JAMES JOSEPH MAIN, JR.,

Petitioner and Appellant,

v.

STATE OF MONTANA,

Respondent and Appellee.

APPEAL FROM: District Court of the Twelfth Judicial District,
In and For the County of Hill, Cause No. DV-19-45
Honorable John W. Larson, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Chad Wright, Appellate Defender, Helena, Montana

For Appellee:

Austin Knudsen, Montana Attorney General, Mardell Ployhar, Assistant
Attorney General, Helena, Montana

Lacey Lincoln, Hill County Attorney, Havre, Montana

Daniel M. Guzynski, Special Deputy County Attorney, Helena, Montana

Submitted on Briefs: June 24, 2024

Decided: September 24, 2024

Filed:


Clerk

Justice Ingrid Gustafson delivered the Opinion of the Court.

¶1 James Main (Main) appeals from the April 13, 2022 Order Denying Petitioner’s Amended Petition for Postconviction Relief issued by the Twelfth Judicial District Court, Hill County. We affirm.

¶2 We restate the issue on appeal as follows:

Did the District Court abuse its discretion when it denied Main’s petition for postconviction relief without holding a hearing to consider evidence before adopting findings that were made in the co-defendant’s postconviction case?

FACTUAL AND PROCEDURAL BACKGROUND

¶3 On November 25, 2006, Lloyd Kvelstad was murdered at a house party in Havre, Montana. Evidence offered at trial established that when police arrived, Kvelstad’s face was severely beaten, a ligature made from a hoodie draw string was tied around his neck, and his pants were down around his ankles. Additional testimony established that Main was in a verbal and physical altercation with Kvelstad that night. Main was seen choking Kvelstad to the point of unconsciousness several times, but Kvelstad regained consciousness each time. Kim Norquay, another man at the party, slapped Kvelstad’s face a few times and simulated a sexual assault on him. Another witness, Red Elk, overheard Main and Norquay discuss killing Kvelstad. Eventually, Kvelstad “passed out sleeping” and he was carried to the bedroom. According to Red Elk, Kvelstad was alive and not bloody when he left the house later that night at 11 p.m.

¶4 Nathan Oats (Oats), Georgetta Oats, and Ivy Snow arrived at the residence a few hours later. Oats saw Kvelstad lying on the couch in the living room. He tried to wake Kvelstad, but discovered he was unresponsive and severely beaten. Georgetta called the

police. Norquay fled from the house, and Main attempted to leave, but Oats restrained him.

¶5 Main was arrested and charged with deliberate homicide in violation of § 45-5-102(1)(a), MCA (2005) or, alternatively, deliberate homicide by felony murder in violation of § 45-5-102(1)(b), MCA. However, the State moved to dismiss the first charge which left deliberate homicide by felony murder as the remaining charge.

¶6 A jury trial was conducted in February 2009. In addition to the testimony described above, a police interview with Main was admitted where Main admitted that he had fought with Kvelstad. Main admitted there were “a few little knots and bruises” and blood on Kvelstad after the fight. Police testified Main had Kvelstad’s blood on his sweatshirt, pants, hands, and forehead. Police also testified they had to identify Kvelstad by his tattoos because his face was indistinguishable from being beaten. Melissa Snow, owner of the house where these events took place, testified she saw Main choke Kvelstad twice to the point of unconsciousness, and at one point, Main returned from the living room and told her Kvelstad was dead. Red Elk testified he heard Main say “I could break you in half” and “I could kill you,” or words to that effect to Kvelstad.

¶7 Red Elk testified that when Kvelstad regained consciousness after Main choked him, Norquay shadow boxed, slapped, and laughed at Kvelstad. Norquay also exhibited a desire to sexually assault Kvelstad by pulling down his pants and unbuckling Kvelstad’s belt and attempting to pull down Kvelstad’s pants. Snow testified Norquay pulled the string from his sweatshirt, that was later found around Kvelstad’s neck, and placed it on the table.

¶8 Blood and DNA evidence were also presented at trial. Kvelstad's blood was found in the bathroom shower, ceilings, and toilet bowl. Main's blood was found on the bathtub. Main's boots, overalls, and hands had Kvelstad's blood on them. Norquay's jeans, sweatshirt, and jacket had Main's blood on them. Norquay's boots had Kvelstad's blood on them. And the footprint impressions left on Kvelstad's sweatshirt were consistent with the tread on Norquay's shoe.

¶9 The medical examiner described Kvelstad's injuries as internal head bleeding, a fractured rib, hemorrhages in the right eye, bruising to the ears, eyelids, tongue, and back, abrasions to the cheek, chin, nose, and left elbow, and lacerations of the forehead, lips, and right forearm. The examiner could not definitively conclude the cause of death, but indicated strangulation and blunt force trauma combined with Kvelstad's high blood alcohol content of .24 could have caused his death. Kvelstad's autopsy listed the cause of death as homicidal violence including blunt force injuries to the head and probable ligature strangulation.

¶10 Main was convicted of deliberate homicide by felony murder, on February 9, 2009 and sentenced to sixty years in the Montana State Prison. The jury was also instructed on the lesser-included offense of assault, but after weighing the evidence described above, determined the evidence was sufficient to establish Main committed deliberate homicide by felony murder via the aggravated assault on Kvelstad.

¶11 Norquay was also convicted of deliberate homicide by felony murder for Kvelstad's death and tampering with evidence in a separate case which was upheld by this Court. *State v. Norquay*, 2011 MT 34, 359 Mont. 257, 248 P.3d 817. Norquay petitioned for

postconviction relief. Following hearing, the District Court denied his petition for postconviction relief, and this Court upheld the denial. *Norquay v. State*, 2023 MT 165N, 413 Mont. 532, 534 P.3d 132.

¶12 Main appealed his conviction, and this Court upheld it on June 7, 2011, finding the proof presented at trial was sufficient for the jury “to infer that Main inflicted or was accountable for blunt force trauma upon Kvelstad that was causally connected to his death; stated another way, to infer that the conduct causing death was done in furtherance of the aggravated assault which Main committed or was accountable for.” *State v. Main*, 2011 MT 123, ¶ 43, 360 Mont, 470, 255 P.3d 1240. Main filed an amended petition for postconviction relief on October 1, 2020. Main’s petition alleged the State violated his *Brady*¹ rights because the Havre police failed to disclose crime scene photos that showed Kvelstad’s body in its initial position. According to Main, the photos that were disclosed showed the body in a position two feet forward on the living room floor from where it initially was according to witness testimony. Additionally, Main’s petition alleged the police hid exculpatory evidence that the body had moved after paramedics arrived, and he asserted that information was exculpatory because it was relevant to determining the time and cause of death. The State filed a response to Main’s petition and submitted the order denying postconviction relief from Norquay’s case as persuasive authority.

¹ *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963) established the rule of law that failure by the State to disclose exculpatory evidence to a defendant is a violation of the defendant’s Fourteenth Amendment due process guarantee.

¶13 The District Court denied Main’s request for a hearing to question the Havre Police Department about the images given the “overlap of duplicative testimony already in the record in the four-day postconviction hearing in the companion *Norquay* case.” Instead, the District Court took judicial notice of the order denying postconviction relief in Norquay’s case and noted Main conceded his arguments and the evidence he intended to present at a hearing were the same as that presented in Norquay’s hearing. The court also denied Main’s amended original petition for postconviction relief, reasoning Main could not “establish that the prosecution suppressed favorable evidence or that had the purported altered or deleted images been disclosed, a reasonable probability exists that the outcome of the trial would have been different.”

STANDARD OF REVIEW

¶14 “We review a district court’s denial of a petition for postconviction relief to determine whether the court’s findings of fact are clearly erroneous and whether its conclusions of law are correct.” *Marble v. State*, 2015 MT 242, ¶ 13, 380 Mont. 366, 355 P.3d 742 (internal quotations and citation omitted). “Findings of fact are clearly erroneous if they are not supported by substantial evidence, the court has misapprehended the effect of the evidence, or our review of the record convinces us that a mistake has been made.” *State v. Warclub*, 2005 MT 149, ¶ 23, 327 Mont. 352, 114 P.3d 254. We review discretionary rulings, including whether to hold an evidentiary hearing, in a postconviction proceeding for abuse of discretion. *Marble*, ¶ 13.

DISCUSSION

¶15 *Did the District Court abuse its discretion when it denied Main's petition for postconviction relief without holding a hearing to consider evidence before adopting findings that were made in the co-defendant's postconviction case?*

¶16 Section 46-21-101, MCA, affords a person convicted of a crime the opportunity to challenge his conviction in a postconviction proceeding. The petition must identify all facts supporting the grounds for relief set forth in the petition and have attached affidavits, records, or other evidence establishing the existence of those facts. Section 46-21-104(1)(c), MCA. To succeed on a postconviction petition based on newly discovered evidence, a petitioner must produce newly discovered evidence that, if proved, would show that he did not commit the crime for which he was convicted. Section 46-21-102(2), MCA. To determine what constitutes new evidence, a court may consider a variety of factors such as whether the evidence was discovered since the defendant's trial, whether the evidence is material to the issues at trial, whether failure to discover the evidence sooner was not the result of the defendant's lack of diligence, and whether the evidence is not merely cumulative nor impeaching. *Marble*, ¶¶ 22, 36.

¶17 Additionally, a district court is not required to hold an evidentiary hearing for every petition for postconviction relief. *State v. Cobell*, 2004 MT 46, ¶ 12, 320 Mont. 122, 86 P.3d 20 (“If a district court finds that the allegations in a petition are without merit or would not otherwise entitle a petitioner to relief, a district court may deny an application for postconviction relief without holding an evidentiary hearing.”).

¶18 Here, we find Main's petition lacked sufficient evidence to necessitate a hearing. Main's petition alleged the police withheld a certain number of photos, and those photos

show the body in a different position than it was in when police arrived. According to Main, this evidence is crucial to determining the time and cause of death because it could show Kvelstad was alive and moved on the floor by himself, and then died of hypothermia. However, we find that even if the missing photos were turned over, they would not prove that Main did not commit the crime for which he was guilty—deliberate homicide by felony murder.

¶19 Under the statute, a person is guilty of deliberate homicide by felony murder if the person commits “or is legally accountable for the attempt or commission of . . . aggravated assault . . . and in the course of the forcible felony or flight thereafter, the person or any person legally accountable for the crime causes the death of another human being.” Section 45-5-102(1)(b), MCA. The prosecution does not need to prove the “‘purposely or knowingly’ element of the crime of deliberate homicide.” *State v. Kills on Top*, 241 Mont. 378, 387, 787 P.2d 336, 341 (1990) (citations omitted). Instead, the defendant’s intent to commit the underlying felony supplies the intent for all subsequent consequences, including homicide. *State v. Nichols*, 225 Mont. 438, 449, 734 P.2d 170, 176 (1987). A causal connection between the felonious act and the victim’s death must be present. *Kills on Top*, 241 Mont. at 387, 787 P.2d at 342. The death must be a consequence of the felony and not merely a coincidence. *State v. Weinberger*, 206 Mont. 110, 115, 671 P.2d 567, 569 (1983).

¶20 Here, Main committed the underlying felony of aggravated assault that, according to the medical examiner, was a probable cause of Kvelstad’s death. Thus, even if Main proved the body moved after police arrived, there is still sufficient evidence in the record

to establish Main is guilty of deliberate homicide by felony murder. For example, the State's evidence shows Main was in a verbal and physical altercation with Kvelstad. Main was seen choking Kvelstad to the point of unconsciousness twice and causing concern that Kvelstad was going to be killed. Main told Kvelstad "I could break you." Main also told Melissa Snow he thought Kvelstad was dead. The medical examiner opined that Kvelstad's injuries were so severe that they were life-threatening and made him unrecognizable to police. The jury weighed all such evidence and inferred that Main inflicted or was accountable for a serious physical attack upon Kvelstad, sufficient to create a substantial risk of death or injuries which "at the time of injury, can reasonably be expected to result in serious permanent disfigurement or protracted loss or impairment." Section 45-2-101(66)(a)(i)(iii), MCA (defining "serious bodily injury" as related to aggravated assault). Based on the evidence already in the record, it is not reasonably likely that the outcome of this case would have been different had the missing photos been disseminated.

¶21 Additionally, Main's alleged evidence is not "newly discovered evidence" that satisfies the requirements of § 46-21-102(2), MCA. Rather, Main presents a new theory of how Kvelstad died. The witness testimony, diagrams, and other reports were all available to Main during trial. *See Marble*, ¶ 22. The missing photographs have no bearing on whether Main committed the underlying felony of aggravated assault that resulted in Kvelstad's death. We agree with the District Court that Main did not offer new evidence that established he did not commit deliberate homicide by felony murder.

¶22 Main also claims the State violated his *Brady* rights by withholding and doctoring trial evidence that would prove he did not kill Kvelstad. To establish a *Brady* violation, a defendant must show the State possessed evidence favorable to the defense; the prosecution suppressed the favorable evidence; and “had the evidence been disclosed, a reasonable probability exists that the outcome of the proceedings would have been different.” *State v. Ilk*, 2018 MT 186, ¶ 29, 392 Mont. 201, 422 P.3d 1219. And, as pointed out above, even if the photos were disseminated, there would not exist a reasonable probability that the trial outcome would be different. Thus, Main’s *Brady* claim fails.

¶23 Finally, Main argues it was error for the District Court to take judicial notice of the findings made in Norquay’s hearing for postconviction relief without holding a hearing in this case. We, too, do not find this to be an appropriate practice. However, we need not further address this issue because, as discussed above, Main’s petition lacked allegations sufficient to warrant a hearing in the first place.

CONCLUSION

¶24 Affirmed.

/S/ INGRID GUSTAFSON

We concur:

/S/ JAMES JEREMIAH SHEA

/S/ LAURIE McKINNON

/S/ DIRK M. SANDEFUR

/S/ JIM RICE