No. 13-587

IN THE SUPREME COURT OF THE UNITED STATES

ANITA TRAMMELL, Warden,
Oklahoma State Penitentiary,

Petitioner,

v.

STERLING B. WILLIAMS,

Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals for the Tenth Circuit

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Did the Tenth Circuit correctly conclude that the Oklahoma Court of Criminal Appeals employed an erroneous analysis under *Beck v. Alabama*, 447 U.S. 625 (1980), where the OCCA examined whether the evidence was sufficient to support the defendant's conviction for first-degree capital murder, instead of inquiring whether the evidence was sufficient to support an instruction on the lesser-included offense of second-degree murder?

2. Did the Tenth Circuit correctly conclude that there was evidence in the record on which a reasonable jury could have found the defendant guilty of the non-capital offense of second-degree murder?

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STATEMENT OF THE CASE

A. Proceedings. Sterling Williams was charged in Tulsa County, Oklahoma with first-degree murder, and assault and battery with intent to kill. A bifurcated trial was held in Tulsa County district court in April 1999. The jury found Mr. Williams guilty on both counts and affixed a punishment of death on the first-degree murder conviction.

Mr. Williams appealed his conviction and sentence to the Oklahoma Court of Criminal Appeals ("OCCA"). A majority of the OCCA panel affirmed. App. 150-227. As to whether the trial court erred in denying Mr. Williams's request for a second-degree murder instruction, the majority held that it had not, focusing on the fact that there was evidence supporting first-degree murder. App. 160-62. This was in contrast to the correct standard, which requires the court to examine whether there was evidence to support the lesser-included offense. *Phillips v. Workman*, 604 F.3d 1202, 1212 (10th Cir. 2010). In a strongly worded dissent, Judge Charles Chapel took issue with the majority's analysis. App. 223-27. He accused the majority of only paying "lip service" to the correct standard: "The majority opinion states but ignores the proper test, replacing it with a rule that essentially excuses a refusal to give warranted instructions whenever the evidence supports the jury's ultimate determination." App. 224-25.

Mr. Williams filed an application for state post-conviction relief in the OCCA, which was denied, and then filed a petition for certiorari in the United States Supreme Court, which was also denied.

In January 2003, Mr. Williams filed a Petition for Writ of Habeas Corpus in the United States District Court for the Northern District of Oklahoma. That petition was denied in an order issued in March 2011. App. 28. Although the court's order spanned 86 pages, never once did the district court acknowledge Judge Chapel's dissenting opinion.

Mr. Williams filed a notice of appeal on April 4, 2011, asserting, among other things, that the failure to give a lesser-included offense instruction violated his due process rights under *Beck v. Alabama*, 447 U.S. 625 (1980). In an unpublished decision issued in August 2013, the Tenth Circuit agreed with Mr. Williams's *Beck* argument and conditionally granted his habeas petition, subject to the state's right to retry Mr. Williams within a reasonable period of time. App. 27.

In analyzing the *Beck* argument, the Tenth Circuit noted that in three previous cases "we have held that the OCCA applied a rule that contradicts *Beck* because it focused on the sufficiency of the evidence to support the *capital* offense instead of the sufficiency of the evidence to support the *lesser included* offense." App. 10 (emphasis in original) (citing *Hogan v. Gibson*, 197 F.3d 1297 (10th Cir.

1999); *Taylor v. Workman*, 554 F.3d 879 (10th Cir. 2009); and *Phillips v. Workman*, 604 F.3d 1202 (10th Cir. 2010)). The Tenth Circuit concluded that the OCCA majority committed the same error in this case, App. 12, and further concluded that there was evidence in the record on which a reasonable jury could have found Mr. Williams guilty of second-degree murder. App. 19. As to the latter conclusion, the Tenth Circuit found its decision in *Phillips* controlling. *Id.*

The State filed a timely petition for rehearing and for rehearing en banc, which the Tenth Circuit denied on October 4, 2013. App. 228. The State then filed its Petition for Writ of Certiorari.

B. Facts Relating to the Crime

Mr. Williams was employed in the Tulsa area as a salesman for a meat company. This brought him into contact with numerous customers, one of whom was LeAnna Hand, who resided in a duplex in Tulsa with her roommate, Elizabeth Hill. Ms. Hand bought meat from Mr. Williams on a few occasions in the spring of 1997.

On the morning of May 14, 1997, Mr. Williams called Ms. Hand and offered to deliver some free chicken. At approximately 11 a.m., Mr. Williams arrived and knocked at the door. Mr. Williams entered, carrying a box containing a large knife, gloves, and a roll of duct tape. At some point shortly after Mr. Williams

arrived, a struggle ensued between Mr. Williams and Ms. Hand. Ms. Hand fought and screamed for help from Ms. Hill, who was in her bedroom. During the struggle, the knife entered Ms. Hand once in the side, piercing her heart. She lost consciousness within seconds, and died within a few minutes.

Ms. Hill heard Ms. Hand's scream and, almost simultaneously, a thumping sound as Ms. Hand's body hit the floor. Ms. Hill stepped into the hallway and saw Mr. Williams bent over in the living room. She ducked back into her bedroom and locked the door. Mr. Williams kicked it open. Ms. Hill tried to run out the door past Mr. Williams, but he tackled her in the hallway. Mr. Williams began choking Ms. Hill, but at some point she escaped out the front door.

Ms. Hill could not remember how she escaped and conceded that it was possible Mr. Williams let her go. Other witness testimony supported this possibility. For example, Boyd Hardin, who was doing paving work in the parking lot across the street, testified that he observed Mr. Williams exit the duplex first, then observed Ms. Hill exit the duplex less than a minute later.

Shortly after the incident, Mr. Williams called his employer and said, without elaborating, that he had just killed a girl. The employer described Mr. Williams as very upset, sobbing and crying. Mr. Williams was stopped by police the next day in Alexandria, Louisiana, and taken into custody without incident.

REASONS FOR DENYING THE PETITION

I. THE STATE'S FIRST ISSUE IS MERELY AN EXPRESSION OF DISAGREEMENT WITH THE TENTH CIRCUIT'S APPLICATION OF *BECK* PRECEDENT, WHICH IS NOT A GROUND FOR GRANTING CERTIORARI

The State argues that the Tenth Circuit granted a writ of habeas corpus despite the fact that the OCCA majority "expressly recognized, cited ***and applied*** the appropriate federal standard of review . . . ." Petition at i (emphasis added). That is an inaccurate characterization of the OCCA majority's decision. As the dissenting OCCA judge noted,[1] the OCCA majority cited the correct *Beck* standard, but failed to apply it. App. 224 (Chapel, J., dissenting). The Tenth Circuit's subsequent application of its *Beck* precedent, overturning the OCCA majority, was so uncontroversial that the panel deemed its decision unworthy of publication. *See* App. 1. The State's petition is similarly unworthy of being granted.

As the Tenth Circuit explained in its decision granting Mr. Williams's habeas petition, a line of Tenth Circuit decisions – *Hogan v. Gibson*, *Taylor v. Workman*, and *Phillips v. Workman* – stands for the proposition that a state court is owed no deference under AEDPA when it accurately states the *Beck* standard but fails to apply it correctly. App. 10-12; *see* 28 U.S.C. § 2254(d)(1) (writ of habeas

[1] The State's petition omits any mention of Judge Chapel's dissent.

corpus shall be granted if the state court adjudication "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law"). Under *Beck*, a lesser-included offense instruction must be given when there is evidence in the record on which a reasonable jury could have convicted the defendant on the lesser-included offense. 447 U.S. at 635. A court assessing a *Beck* claim, therefore, must examine whether there was evidence to support the lesser-included offense.

In *Hogan*, *Taylor*, and *Phillips* – all of which arose from capital proceedings in Oklahoma – the OCCA incorrectly "focused on the sufficiency of evidence to support the *capital* offense instead of the sufficiency of evidence to support the *lesser-included* offense." App. 10 (emphasis in original). As the Tenth Circuit explained in *Phillips*:

> The OCCA's assessment of the lack of evidence supporting a second-degree murder instruction appears to be based largely on its view that the evidence *did* support [the applicant's] conviction for first-degree . . . murder. . . . [B]y limiting its analysis of Mr. Phillips's *Beck* claim to the sufficiency of the evidence supporting the first-degree murder conviction, the OCCA's reasoning turns *Beck* on its head, and "is in gross deviation from, and disregard for, the Court's rule in *Beck*."

Phillips, 604 F.3d at 1212 (emphasis in original) (quoting *Hogan*, 197 F.3d at 1305). Similarly, Judge Michael McConnell observed in *Taylor* that *Beck* demands the jury be permitted to consider a lesser-included offense ***in every case***

in which the evidence would have supported such a verdict, "not just in those cases where the court believes the lesser verdict would be most consistent with the evidence." *Taylor*, 554 F.3d at 887.

In this case, the Tenth Circuit concluded the OCCA majority made precisely the same analytical error that had been made in *Hogan*, *Taylor*, and *Phillips*.[2] App. 12. The OCCA majority recognized that it must inquire whether there was evidence on which a jury could rationally find the defendant guilty of second-degree depraved mind murder. *See* App. 14. As the Tenth Circuit observed, however, instead of engaging in that inquiry, the OCCA majority "ruled that an instruction on second-degree murder was not warranted *because* the evidence supported the conviction of first-degree murder." *Id.* (emphasis in original). The dissenting OCCA judge made the same observation: "The majority opinion states but ignores the proper test, replacing it with a rule that essentially excuses a refusal to give warranted instructions whenever the evidence supports the jury's ultimate determination." App. 224-25 (Chapel, J., dissenting). The Tenth Circuit's and Judge Chapel's observation is indisputably correct: the OCCA majority's *Beck*

[2] *Taylor*, *Phillips*, and the instant case were all decided by the OCCA in the space of about 18 months, from October 1999 to April 2001.

analysis twice states, in the space of a few sentences, that the evidence was sufficient for a finding of intent to commit first-degree murder.[3]

The State attempts to characterize the Tenth Circuit's decision as having "presumed the OCCA did not know and follow the law." Petition at 21. To "presume" something means "to assume beforehand." BLACK'S LAW DICTIONARY 1304 (9th ed. 2009). As the foregoing discussion demonstrates, the Tenth Circuit did no such thing. It examined closely the OCCA majority's analysis, quoting the key passage and observing based on that passage that the OCCA majority made exactly the same error the OCCA had made in three previous cases. App. 12-14. Indeed, the Tenth Circuit noted that the OCCA majority's reasoning was "strikingly similar" to the erroneous analysis employed in *Phillips*. App. 14. The Tenth Circuit's analysis was not, as the State claims, a "presumption" that the OCCA majority was wrong.[4] It was a straightforward examination of the OCCA

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[3] App. 162 ("This evidence is sufficient for any rational tier of fact to find Appellant acted with the premeditated intent to kill the deceased. . . . The evidence clearly supports a finding that when Appellant stabbed the deceased, he did so with the intent to kill her . . . .").

[4] Thus, two of the cases the State cites as evidence of a conflict, *Woodford v. Visciotti*, 537 U.S. 19 (2002) and *Parker v. Secretary for Dep't of Corrections*, 331 F.3d 764 (11th Cir. 2003), are not in conflict with the Tenth Circuit's decision at all. *Woodford* and *Parker* stand for the oft-expressed principle that absent some indication to the contrary, federal courts should not presume that a state court did

majority's reasoning, a comparison of that reasoning to existing *Beck* precedent, and a conclusion that the OCCA majority's reasoning was indistinguishable from the reasoning overturned in *Hogan*, *Taylor*, and *Phillips*.

In an effort to manufacture a circuit conflict, the State cites decisions outside the Tenth Circuit. Those decisions, however, illustrate a general principle that is as true in the Tenth Circuit as it is everywhere else. Pursuant to *Beck v. Alabama*, a lesser-included offense must be given if, and only if, "the evidence would permit a jury ***rationally*** to find [the defendant] guilty of the lesser offense and acquit him of the greater." 447 U.S. at 635 (emphasis added). The touchstone under *Beck*, therefore, is reasonableness. In the cases cited by the State – *Smith v. Bradshaw*, 591 F.3d 517 (6th Cir. 2010) and *Winston v. Kelly*, 592 F.3d 535 (4th Cir. 2010) – the state courts concluded that the evidence was such that no reasonable juror could have found the defendant guilty of the lesser-included offense,[5] and the federal courts agreed. The fact that the reasonableness principle resulted in a different conclusion in this case, which presented its own unique set of circumstances, does not demonstrate an actual conflict. *See* ROBERT L. STERN, *ET*

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not know and follow the law. *Woodford*, 537 U.S. at 24, *Parker*, 331 F.3d at 786. As discussed above, the Tenth Circuit did not violate this principle.

[5] In contrast to this case, in *Smith* and *Winston* there was no dissenting state court judge.

AL., SUPREME COURT PRACTICE, at 225 (8th ed. 2002) ("there must be a real or 'intolerable' conflict on the same matter of law or fact, not merely an inconsistency in dicta or in the general principles utilized"). The State's claim that the Tenth Circuit's decision is in conflict with decisions of this Court or other courts of appeal is baseless.

The State plainly disagrees with the Tenth Circuit's application of its *Beck* precedent, but that is not a sufficient reason to grant review. And the State's attempt to manufacture a conflict fails. The petition should be denied.

II. THE TENTH CIRCUIT'S DECISION WAS CONSISTENT WITH BECK'S "SUPPORTED BY THE EVIDENCE" REQUIREMENT FOLLOWED BY EVERY DISTRICT COURT, AND THERE WAS SUFFICIENT EVIDENCE TO SUPPORT ITS RULING

The State also contends the Tenth Circuit erred when it determined there was sufficient evidence introduced at Mr. Williams' trial to necessitate the giving of a lesser-included instruction for second-degree murder.[6] After an initial

[6] The State characterizes this issue as one on which there is a "conflict" among the lower courts. Other than some conclusory references to this purported conflict at the beginning and end of Section II of the petition, its supporting argument is limited to footnote 13. That footnote provides examples of different outcomes based on each court's analysis of a unique set of facts. However, all of those lower courts followed the well-established *Beck* standard by examining whether there was sufficient evidence to support the giving of a lesser-included instruction. The fact that lower courts arrive at varying results does not mean that they employ conflicting analyses. In each case, the courts apply the same general principle derived from this Court's holding in *Beck*.

introduction of the relevant law, the State then spends several pages arguing the ***facts*** of this case. There is no substantive argument about the ***law*** or its effects on national jurisprudence which would require this Court to grant certiorari review.

The facts of this case have been combed over by nine judges (five state appellate court judges, one federal district judge and three federal circuit judges), with five finding there was not sufficient evidence and four finding there was sufficient evidence to support the lesser-included instruction. Yet the State still insists that "reasonable jurists" could not disagree on the issue. Now they are asking for nine more jurists to examine the facts of this case. Such factual questions are not worthy of this Court's time. The facts have been combed over time and again by competent jurists, and the issue is resolved. This Court should deny the Petition for Certiorari on this issue.

Although Mr. Williams believes the above argument is sufficient in itself for this Court to deny certiorari, because the State so blatantly slants the evidence submitted at the trial level in its petition, he will provide the following factual response to the numerous pages of factual "evidence" the State provided in its petition.

The State begins by pointing to remarks of Mr. Williams' trial counsel during opening statements and closing argument. They argue that "[Mr.

William's] counsel wholly failed to direct the jury's attention to *any* evidence to support an inference, however slight, that [Mr. Williams] did not have the intent to kill. Plainly, because he could not." Petition at 27-28 (emphasis in original). Of course, the statements of trial counsel (which were based in part on the trial court's denial of the lesser-included instruction) are not evidence and are irrelevant at this stage. Even if such statements were relevant, the prosecutor's closing arguments acknowledged the inferences that would have supported a lesser-included offense. In particular, he remarked that Mr. Williams' plan, whatever it was, "went awry." At the second stage, the prosecutor's remarks were even more explicit: "Ladies and gentlemen, the underlying offense is obvious, attempted rape. . . . [Y]ou can know from this evidence he was attempting to rape her."

The State next argues that the Tenth Circuit's *Beck* analysis is incorrect because it based its decision on "speculative and non-existent facts." Petition at 28. Although the State claims that the Tenth Circuit relied upon "a clear misstatement of the evidence," *id.* at 37, the State really just disagrees with the inferences to be drawn from the evidence. This is not a proper basis on which to grant a petition for certiorari. The Tenth Circuit noted several points of evidence in this case which supported a finding of second-degree murder, including that Williams expressed remorse and was emotionally upset after the killing. App. 21-

23. As the Tenth Circuit noted, this evidence is similar to evidence which led it to conclude in *Phillips* that there was sufficient evidence to support a lesser-included instruction in that case. *See Phillips*, 604 F.3d at 1214. The State's petition acknowledges this similarity in a footnote, and the language in that footnote is telling. The State says that Mr. Williams "***may have*** voiced some remorse" and "the purpose of the call ***may have*** been to evade capture" and "his alleged remorse ***may have*** stemmed from" his failure to kill Ms. Hill. Petition at 29, n.16 (emphasis added). The State's continuous use of the phrase "may have" shows that a reasonable jurist could have drawn any number of inferences from the evidence, including that it showed remorse for the killing itself.

The first factual inference the State attacks in the main body of its petition deals with the fact that the requisite intent under Oklahoma law can be formed in an instant. The State then makes pages of factual arguments which support their hypothesis that intent in this case actually was formed in an instant. In summary, they argue the size of the knife, the force of the thrust involved to cause the wound, and the fact the victim could have identified Mr. Williams all show he intentionally killed her. The State avers that based on these factors, "a *rational* jury could *reasonably* conclude *only* that Petitioner killed [the victim]." Petition at 31-32 (emphasis in original).

Although this argument may have made for an effective closing at trial in front of the jury, it has no place at this stage. A proper *Beck* analysis requires a court to look at all the evidence, including all possible inferences, to determine if any rational trier of fact could find a defendant innocent of the greater offense and guilty of the lesser-included. The State continues to look at the evidence in the light most favorable to it to argue that the only reasonable inference from the evidence is to find there was intent.[7] The State's factual squabbles concerning the inferences to be drawn from the evidence is not a valid basis on which to seek certiorari.

In support of the State's apparent argument that the only "rational" jurists who have reviewed this case on appeal are the ones who agree with them, the State cites the rulings of the OCCA majority and the federal district court. Both the OCCA majority's ruling and the federal district court's ruling depended on the proposition that "intent" can be formed in "an instant." App. 48, 162. However,

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[7] The most glaring example of pure "closing argument" occurs on page 31 of the State's Petition: "Further, the fact that Respondent knew [the victim] and could readily be identified by her supports only [Mr. Williams] planned intent to kill – ***nothing else can be reasonably inferred.***" App. 31 (emphasis added). The State's claim that only one inference – an intent to kill – can be drawn from the fact that Mr. Williams knew the victim is completely illogical. Rape victims frequently know their assailants, yet the vast majority of rapes do not end in murder, as the State seems to assume.

the actual finding that Mr. Williams's intent was, in fact, formed in an instant is based purely on circumstantial evidence and conjecture. There was no testimony concerning exactly what happened immediately before, during and after the stabbing. Because a reasonable juror could have looked at the exact same circumstantial evidence and determined that no intent – not even intent formed in an instant – was proven beyond a reasonable doubt, the Tenth Circuit correctly concluded that a lesser-included instruction should have been given.

In finding that there was evidence on which a reasonable jury could have found Mr. Williams guilty of second-degree depraved-mind murder, the Tenth Circuit also noted that there was evidence from which a jury could have reasonably inferred that Mr. Williams let the victim's roommate, Elizabeth Hill, go. App. 23. In her trial testimony, Ms. Hill admitted that she did not recall how she got away from Mr. Williams, and that it was possible that he let her go. *Id.* The inference that Mr. Williams let Ms. Hill go was further supported by Boyd Hardin, who was doing paving work in the parking lot across the street at the time of the killing. Mr. Hardin testified on direct examination, and repeated on cross-examination, that he observed Mr. Williams exit the duplex first, then observed Ms. Hill exit less than a minute later. *Id.*

The State rails against the reasonable inference drawn from this evidence, and poses alternative inferences that it contends the Tenth Circuit should have drawn instead. For example, the State notes that Mr. Williams's hands were wet with blood, so that a reasonable inference is not that he let Ms. Hill go, but that Ms. Hill "fought and was able to escape due to the moisture on his hands." Petition at 35. Similarly, the State provides an utterly exhausting explanation for why Boyd Hardin's testimony should not be credited. Once again, these arguments might have been decent jury arguments in closing to persuade the jury that Mr. Williams had the requisite intent for first-degree murder instead of second-degree murder, but the jury never had the chance to make that determination. In any event, such arguments are completely out of place at this stage of the proceedings.

The State's arguments are not only out of place, but they actually underscore the very point of *Beck*, which is that where the evidence supports several reasonable inferences, including that the defendant is guilty of first degree murder ***or*** a lesser-included, non-capital offense, the lesser-included instruction should be given. *See Hogan*, 197 F.3dat 1310 (10th Cir. 1999) (holding that it is constitutionally erroneous to acknowledge evidence supporting an inference of first-degree murder, while ignoring other inferences supporting a lesser-included offense); *Taylor*, 554 F.3d at 887 (*Beck* demands the jury be permitted to consider

a lesser-included offense ***in every case*** in which the evidence would have supported such a verdict, "not just in those cases where the court believes the lesser verdict would be most consistent with the evidence").

Four reasonable jurists – Judge Chapel of the OCCA and Judges Hartz, Murphy and Holmes of the Tenth Circuit – have already determined there was sufficient evidence presented at trial to necessitate the second degree instruction. Judge Chapel put it most succinctly:

> I find that Williams was entitled to a Second Degree Murder instruction. Specifically, Second Degree "Depraved Mind" Murder occurs when death results from an act imminently dangerous to another, done with a depraved mind but without a premeditated design to effect death. Williams's act of stabbing the victim's chest was imminently dangerous and evidenced reckless indifference to her life and safety. The central question here is whether he committed this act with or without the intent to kill. The evidence supports ***either*** conclusion.

App. 226 (citations omitted) (emphasis added). In sum, the Tenth Circuit properly analyzed the case under the universally accepted "supported by the evidence" standard pronounced in *Beck*, and properly granted the relief due Mr. Williams under the United States Constitution. There was sufficient evidence from which a reasonable jury could have determined Mr. Williams's actions constituted conduct which was "imminently dangerous" and evinced a "depraved mind in extreme disregard of human life," although not done with a premeditated intent to kill.

Okla. Stat. tit. 21, § 701.8(1). There is no reason for this Court to undertake a review of that fact-bound conclusion.

CONCLUSION

This Court should deny the State's petition for the foregoing reasons.

Respectfully Submitted,

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AFFIDAVIT OF MAILING

GREGORY W. LAIRD, a member of the bar of this Court, attests that on January 8, 2014, he deposited with the United States Postal Service, first-class and postage prepaid, an envelope containing copies of the foregoing Respondent's Brief in Opposition to Petition for Writ of Certiorari, the accompanying Motion for Leave to Proceed *In Forma Pauperis*, and Affidavit of Service, and addressed to the Clerk of the United States Supreme Court, 1 First Street, NE, Washington, DC 20543.

Gregory W. Laird
Counsel of Record for Respondent

STATE OF OKLAHOMA)
)
COUNTY OF ROGERS)

Subscribed and sworn before me on January 8, 2014.

CYRENA SNIDER
Notary Public
State of Oklahoma
Commission # 13007085
My Commission Expires Aug 2, 2017

Notary Public