

[Cite as *State v. Blalock*, 2010-Ohio-4494.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94198

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

MARCUS BLALOCK

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case Nos. CR-407194 and CR-407947

BEFORE: Jones, J., McMonagle, P.J., and Dyke, J.

RELEASED AND JOURNALIZED: September 23, 2010

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LARRY A. JONES, J.:

{¶ 1} Defendant-appellant, Marcus Blalock (“Blalock”), appeals the trial court’s dismissal of his motion for leave to file a motion for a new trial, or in the alternative, petition of postconviction relief. Having reviewed the arguments of the parties and the pertinent law, we hereby affirm the lower court.

STATEMENT OF THE CASE AND FACTS

{¶ 2} This case was previously before this court in 2002. In that earlier consolidated case, *State v. Blalock*, Cuyahoga App. Nos. 80419 and 80420, 2002-Ohio-4580 (*Blalock I*), Blalock appealed from his convictions for murder, aggravated murder, kidnapping, aggravated robbery, having a weapon while

under disability, tampering with evidence, and obstruction of justice. Blalock proffered 14 assignments of error. This court found no error relevant to Blalock's convictions in Case No. CR-407194 for murder, aggravated murder, kidnapping, aggravated robbery, and having a weapon while under disability and affirmed that judgment. However, this court did find insufficient evidence that Blalock obstructed justice, and this court reversed his conviction for that offense. This court also found that the trial court erred by making the sentence in Case No. CR-407947 consecutive to the sentence in Case No. CR-407194. Therefore, this court reversed the sentence for tampering with evidence in Case No. CR-407947 and remanded for resentencing on that offense.

{¶ 3} On Saturday March 24, 2001, at 8:00 a.m., the badly burned body of Howard Rose ("Rose") was found in the back of a charred pickup truck on Interstate 90 just west of Exit 6 in Pennsylvania. Tire tracks indicated that another vehicle had been stopped behind the truck and proceeded east on Interstate 90. Forensic examination revealed that the cause of death was a single gunshot wound to the back of the head at point blank range. The police investigated and discovered that the truck was registered to Lenor Lemar. It was through this connection that the police located and interviewed family and friends of the victim, Howard Rose.

{¶ 4} During the course of the investigation, the state police discovered that the Maple Heights Police had responded to an incident on the night of March 23, 2001 at the home of Arketa Willis ("Willis"). Willis's aunt and neighbor,

Dorothy Evans, called police at approximately 11:20 p.m. to report suspicious activity at Willis's house, where there were two men parked in the driveway. The police responded and the car left the scene. The police pursued and apprehended the two men inside the car, Dion Johnson ("Johnson") and Ernest McCauley ("McCauley"). McCauley had blood on his clothes. They were both arrested.

{¶ 5} The police entered the house and found blood and a pager with blood on it. Blood was also observed on the driveway. The blood on the pager was later tested and found to be Rose's blood. Willis was interviewed by the police on April 6. First, Willis told the police that the blood on the driveway was from a dog fight. However, Willis later abandoned that story and told the police that she saw the victim dead on her bed. Willis also told them she was afraid of Blalock and he was the one who killed Rose. The police searched Willis's home and found that the bedroom was freshly painted, had a new mattress and box spring, and the driveway had been washed with bleach.

{¶ 6} On April 9, Willis was interviewed again and she told the police that Blalock took her car and the body to Pennsylvania. She later retracted this statement and admitted that she was with Blalock when they took the body to Pennsylvania. Willis testified that she met Rose at Rose's grandfather's house on March 23. When she got there, she received a call from Blalock asking her if she knew anyone who had drugs. Willis turned the call over to Rose, who she knew sold drugs. Rose and Willis drove to Lorain. They made several stops

and then went to a restaurant for dinner. During the course of the evening, Willis observed that Rose had a substantial amount of cash on him.

{¶ 7} Rose eventually took Willis home, where she bathed and dressed for work. Rose told Willis that he had told Blalock to meet him at Willis's house that night. Blalock came to the house before Willis left, and Willis then went to work driving Rose's truck. Willis expected Rose to come to get his truck at the Big Family Lounge where she worked. When Rose did not show up, Willis tried to call Blalock from work. However, she did not get an answer. After Willis called four or five times at various numbers, Blalock finally answered. Willis asked Blalock where Rose was. Blalock told her that he was busy and she should call back later.

{¶ 8} About a half hour later, Willis called Blalock and he told her he would call her back. Blalock called less than half an hour later and told Willis to go to her house and bring the truck. When Willis arrived home, she found a car parked in front of her house with two people inside. One was McCauley, whom she knew. All three of them entered the house together. She saw Rose's body lying on her bed in blood. Blalock told her that he had to "do" Rose. Blalock and McCauley carried the body in blankets through the kitchen and out the side door to the truck. With the help of the third person, Johnson, they got the body into the truck.

{¶ 9} Willis drove the truck away as the police arrived. She went to a gas station, where she called the Big Family Lounge and had a friend, Omar, come

pick her up and take her back to work. She left the truck parked on a side street.

When Willis got off work, she went home, wiped blood off a doorway and poured water on the blood in the driveway. She and Omar then went to the police station. The police told her to go home, where she was met by other police officers. They asked her about the blood on the driveway, and she told them there was a dog fight.

{¶ 10} Willis and Omar then went to Blalock's house. Willis had seen Blalock and his girlfriend, Angie, on her way home from work. Blalock put a gas can in the trunk of Willis's car and they drove to the truck. Blalock drove the truck and Willis and Omar followed. They traveled east on Interstate 90. At a rest stop, Blalock removed the gas can from Willis's car and took it with him in the truck. Near daylight, Blalock drove the truck to the side of the road and Willis pulled in behind him. The truck burst into flames and Blalock jumped out. He got in Willis's car and they continued to drive east to New York City, where they stayed for four hours. They drove back that evening, arriving in Cleveland around 8:00 a.m. on Sunday.

{¶ 11} After this court affirmed in part, reversed in part and remanded in *Blalock I*, the Ohio Supreme Court declined, on November 19, 2003, to accept Blalock's appeal. On May 13, 2005, a federal magistrate judge recommended that the United States District Court for the Northern District of Ohio deny Blalock's petition for writ of habeas corpus. On December 9, 2005, Blalock filed a second motion for leave to file a motion for new trial or in the alternative a

petition for postconviction relief. In February of 2006, Blalock filed a supplement to the motion.

{¶ 12} On April 9, 2009, after various motions were filed, the United States Court of Appeals, Sixth Circuit, affirmed the District court's denial of Blalock's petition for writ of habeas corpus. *Blalock v. Wilson* (C.A.6, 2009), 320 Fed. Appx. 396. On April 30, 2009, Blalock filed a supplement to defendant's motion for new trial.

{¶ 13} On October 5, 2009, the trial court denied Blalock's motion for leave to file motion for new trial or in the alternative petition for postconviction relief. The lower court found that Blalock had full opportunity to cross-examine Willis at trial. The lower court also found that Blalock could have raised his claims during the trial and his claim was barred by res judicata. Blalock now appeals.

ASSIGNMENTS OF ERROR

{¶ 14} Blalock assigns three assignments of error on appeal:

{¶ 15} "I. Defendant was denied due process of law when the court ruled that defendant's motion for a new trial or petition for postconviction [sic] relief was based on res judicata.

{¶ 16} "II. Defendant was denied due process of law when the court disallowed defendant's motion as he offered proof that he was actually innocent.

{¶ 17} "III. Defendant was denied due process of law when the prosecuting attorney took inconsistent positions at different trials concerning who was responsible for the death of Howard Rose."

LEGAL ANALYSIS

{¶ 18} Blalock argues in his first assignment of error that he was denied due process of law when the court ruled that his motion for a new trial or petition for postconviction relief was based on res judicata. Blalock further argues that he was denied due process of law because he offered proof that he was innocent and the prosecuting attorney took inconsistent positions at different trials concerning who was responsible for the death of Rose.

{¶ 19} Review of the record in the case at bar demonstrates that Blalock is once again raising the claim that Willis was the real shooter. It is well settled that the doctrine of res judicata applies in postconviction relief proceedings. “Under the doctrine of res judicata, a final judgment of conviction bars a convicted defendant who was represented by counsel from raising and litigating in any proceeding except an appeal from that judgment, any defense or any claimed lack of due process that was raised or could have been raised by the defendant at the trial, which resulted in that judgment or conviction, or on an appeal from that judgment.” *State v. Cole* (1982), 2 Ohio St.3d 112, 113, 443 N.E.2d 169, citing *State v. Perry* (1967), 10 Ohio St.2d 175, 226 N.E.2d 104, paragraph nine of the syllabus. (Emphasis omitted.)

{¶ 20} In postconviction relief proceedings, the doctrine of res judicata prohibits a court of appeals from considering issues raised at trial or reviewed on direct appeal from the court’s judgment. *State v. Apanovitch* (1991), 70 Ohio App.3d 758, 591 N.E.2d 1374.

{¶ 21} Blalock previously raised this issue in *Blalock I*, supra, when he argued that he believed Willis was the real shooter. As previously found by this court, Blalock was aware of Willis's existence and the allegations against her prior to trial. This cannot be described as new evidence. Accordingly, we find that the lower court acted properly when it found that Blalock is barred from again raising the claim that Willis was the real shooter. Accordingly, his claim is barred by res judicata.

{¶ 22} Blalock's first assignment of error is overruled.

{¶ 23} Blalock argues in his second assignment of error that he was denied due process of law when the court disallowed his motion because he offered proof that he was innocent. Blalock argues that recordings of phone conversations between Willis and McCauley demonstrate that he is actually innocent. Blalock makes much of the fact that the magistrate judge commented that the telephone conversations may indicate some problems with the conviction. However, Blalock fails to emphasize that this same magistrate judge still recommended that Blalock's petition for writ of habeas corpus be denied. The writ was denied and that decision was later affirmed. *Blalock v. Wilson*, supra.

{¶ 24} Moreover, after the phone conversation with Willis, McCauley provided a written statement, notarized by his attorney in which McCauley stated that on March 23, 2001, Blalock without question murdered Rose in cold blood.

McCauley further stated that Blalock told him he shot Rose in the head because Rose would not tell him where the drugs were.

{¶ 25} Although the magistrate may have believed there were some issues surrounding the phone conversations and inconsistent testimony, the magistrate, as well as the other courts, found that these inconsistencies did not outweigh the evidence.

{¶ 26} Accordingly, Blalock's second assignment of error is overruled.

{¶ 27} Blalock argues in his third assignment of error that he was denied due process of law when the prosecuting attorney took inconsistent positions at his trial as compared to McCauley's trial concerning who was responsible for the death of Rose.

{¶ 28} Again, Blalock's argument is barred by *res judicata*. McCauley's trial ended on September 25, 2001. Blalock filed his appeal in *Blalock I* on October 26, 2001. McCauley's trial had ended and McCauley had already been sentenced before Blalock filed his appeal. Blalock was therefore able to raise this argument on direct appeal and yet failed to do so.

{¶ 29} Moreover, in this case four defendants, Blalock, McCauley, Willis, and Johnson, were charged with causing Rose's death. Although Blalock was tried and convicted as being the actual shooter, trial also proceeded against McCauley as being complicit in Rose's murder. Blalock was already on notice by operation of R.C. 2923.03(F)¹ that evidence could be presented that the

¹R.C. 2923.03, Complicity, subsection (F), provides the following: "(F) Whoever

defendant was either a principal or an aider and abettor for that offense. See *State v. Dotson* (1987), 35 Ohio App.3d 135, 520 N.E.2d 240. See, also, *State v. Smith*, Cuyahoga App. No. 86690, 2006-Ohio-3156, ¶66.

{¶ 30} Accordingly, we find no error on the part of the trial court. Blalock's third assignment of error is overruled.

Judgment affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

It is ordered that a special mandate issue out of this court directing the Cuyahoga County Court of Common Pleas to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

LARRY A. JONES, JUDGE

CHRISTINE T. MCMONAGLE, P.J., CONCURS
IN JUDGMENT ONLY;
ANN DYKE, J., CONCURS

violates this section is guilty of complicity in the commission of an offense, and shall be prosecuted and punished as if he were a principal offender. A charge of complicity may be stated in terms of this section, or in terms of the principal offense."