

MAR 27 2006

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

MICHAEL S. RICHIE
CLERK

JAMES S. RICHARDSON,)
)
 Appellant,)
 v.)
 THE STATE OF OKLAHOMA,)
)
 Appellee.)

NOT FOR PUBLICATION
Case No. F-2004-389

SUMMARY OPINION

CHAPEL, PRESIDING JUDGE:

James Stephen Richardson was tried by jury and convicted of Robbery By Force, After Former Conviction of Two Felonies, in violation of 21 O.S.2001, §§ 792-800, in the District Court of Tulsa County, Case No. CF-2003-4184. In accordance with the jury's recommendation, the Honorable Gordon D. McAllister, Jr., sentenced Richardson to twenty (20) years imprisonment and a \$1500 fine. Richardson appealed his conviction and his sentence.

Richardson has raised the following proposition of error:

- I. COUNSEL WAS INEFFECTIVE:
 - A. COUNSEL FAILED TO CHALLENGE FOR CAUSE JUROR
 - B. COUNSEL FAILED TO CHALLENGE IDENTIFICATION PROCEDURES
 - C. COUNSEL FAILED TO OBTAIN RELEVANT EXCULPATORY EVIDENCE.

On November 14, 2005, in accord with Rule 3.11(B)(3)(b), this Court remanded this case to the district court for an evidentiary hearing

on Richardson's third claim of ineffective assistance of counsel.¹ In Proposition I, Part C, Richardson has alleged ineffective assistance of counsel due to counsel's failure to discover and use exculpatory evidence relating to the David Moss Correctional Center's policy that an inmate's clothing may not be released with other personal property.²

An evidentiary hearing was held on December 13, 2005, before the Honorable Gordon D. McAllister, Jr. On January 12, 2006, the district court's findings of fact and conclusions of law regarding the remanded issue were filed in this Court.

The district court's findings include the following: (1) "according to relevant jail policy at the time of trial, booking clothing could only be released when the Defendant was either released from jail or sent to the Department of Corrections, and that policy was available to trial counsel had he investigated;" (2) "trial counsel did not investigate to discover jail policy because he erroneously assumed that personal property and clothing were commingled and thus could be released to specified people;" (3) "trial counsel would have introduced this evidence had he known about it;" (4) "the defendant would have been booked into jail with, but not necessarily wearing, the clothes he was arrested in because

¹ Rule 3.11(B)(3)(b), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2003).

² We summarized the case against Richardson in our Order Supplementing the Record and Remanding for Evidentiary Hearing. We also summarized the controversy at trial regarding the Yankees t-shirt that both victims described their white male assailant as wearing, and that an arresting officer described Richardson as wearing at the time of his arrest, but that does not show up in the photographs taken of Richardson's clothing at the booking center.

the Broken Arrow police would not have permitted a change of clothes;” (5) “defense counsel’s failure to investigate the jail policy in effect at the time of the booking and up to trial was not a reasonable decision based upon accurate information;” and (6) “had defense counsel admitted the jail policy into evidence at trial, his theory of defense based on misidentification would have been considerably strengthened”

The district court concluded that defense counsel “failed to conduct a reasonable investigation” regarding the clothing policy and that this failure “cannot be accorded strategic status.” The district court further concluded that “[t]he failure to investigate and present this exculpatory evidence was prejudicial to James Richardson’s defense,” and that if the policy had been presented to the jury and not countered by the State, the trial’s “outcome would likely have been different.” The district court concluded that Richard had established prejudicial ineffective assistance of counsel.

This Court gives “strong deference” to the district court’s findings of fact and conclusions of law, although this Court determines the “ultimate issue whether trial counsel was ineffective.”³ This Court appreciates the district court’s prompt and able handling of this matter, both in holding the evidentiary hearing and reporting back to this Court. We have no reason to disagree with the district court’s findings of fact and conclusions of law. We likewise agree with that court’s conclusion

³ Rule 3.11(B)(3)(b)(iv), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2003).

that Richardson has established prejudicial ineffective assistance of counsel regarding his Proposition I, Part C, claim.⁴ Hence this case must be reversed and remanded for a new trial.⁵

After thorough consideration of the entire appellate record, including the original record, transcripts, and briefs of the parties, we find that reversal is required and remand for new trial.

Decision

The Judgment and Sentence of the District Court is **REVERSED** and **REMANDED** for new trial. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2006), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

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OPINION BY: CHAPEL, P. J.

LUMPKIN, V.P.J.:	CONCUR IN RESULTS
C. JOHNSON, J.:	CONCUR
A. JOHNSON, J.:	CONCUR
LEWIS, J.:	CONCUR

⁴ See *Strickland v. Washington*, 466 U.S. 668, 687-88, 104 S.Ct. 2052, 80 L.Ed. 2d 674 (1984).

⁵ Richardson's Proposition I, Part A, claim is rendered moot by today's decision. We do not address and need not today resolve his Proposition I, Part B, claim.

LUMPKIN, VICE-PRESIDING JUDGE: CONCUR IN RESULT

I concur in the results reached by the Court due to the fact it appears defense counsel failed to complete even elementary investigation in this case and I trust the findings of the District Judge.

However, the District Court's findings are based on the absence of a blue shirt in exhibits 3-8. According to the correctional center's policy, the shirt would be included in these photographs had the appellant been wearing or had it on his person. However, at the evidentiary hearing the State entered evidence of the Booking Procedure from the David L. Moss Corrections Center and testimony from an Inmate Property Person employed at the corrections facility. State's exhibit 1 shows that the appellant was booked into the facility with two shirts, one blue and one gray. Ms. Jones was the employee who released the items in the clothing bag #2563, and her testimony was that there were two shirts in the bag, one blue and one gray. State's exhibit #2 was also admitted by the District Court. Exhibit 2 is a photograph taken when the appellant was booked temporarily into the Broken Arrow jail. The photograph shows the appellant in a blue v-necked shirt, worn over the top of a gray shirt.

Based on this evidence, it appears the stated policy was not followed by the David L. Moss Corrections Center employees. Regardless, defense counsel should have presented these issues to the jury for consideration to ensure Appellant received the representation he was due.