

MAY 31 2000

JAMES W. PATTERSON
CLERK

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

JOYCE LOYETTA BOWERS)

Appellant,)

v.)

THE STATE OF OKLAHOMA)

Appellee.)

Case No. F-99-264

SUMMARY OPINION

CHAPEL, JUDGE:

After a jury trial in Washington County District Court, Joyce Bowers was convicted in Case No. CF-97-522 of Second Degree Murder during the commission of neglect or abuse by a caretaker in violation of 21 O.S. 1991, §§ 701.8 and 843.1 and in Case No. CF-97-414 of Financial Exploitation by a caretaker. Following the jury's recommendation, the Honorable John G. Lanning sentenced Bowers to twenty (20) years imprisonment in CF-97-522 and five (5) years imprisonment and a \$10,000.00 fine in CF-97-414 with the sentences to be served consecutively. Bowers has perfected her appeal to this Court.

Bowers raises the following propositions of error:

- I. Mrs. Bowers's conviction for second degree felony-murder must be vacated because the merger doctrine prohibits the use of the act which allegedly caused the decedents death from being used as the predicate felony in a felony murder prosecution.
- II. Error occurred when the trial court allowed the State to amend the charge on the first day of trial, over appellant's objection.
- III. The admission of other crimes evidence deprived Mrs. Bowers of a fair trial.

After thoroughly considering the entire record before us on appeal, including the original record, transcripts, and briefs of the parties, we find that Bowers's Second Degree Murder conviction in Case No. CF-97-522 must be vacated and reversed and remanded for a new trial and her conviction and sentence for Financial Exploitation by a caretaker in CF-97-414 is affirmed.

We find that in Proposition I that Bowers's second degree felony murder conviction must be vacated because the underlying felony of caretaker abuse and neglect merged into the homicide.¹ We find in Proposition II that upon the commencement of the proceedings, Bowers had notice of the allegations she would have to defend in CF-97-414; the amendments to the Information did not charge a new crime or prejudice her defense.² We find in Proposition III that the district court did not abuse its discretion in admitting any evidence except for non-prejudicial evidence concerning Bowers's alleged involvement in harassing phone calls.³

Decision

The Judgment and Sentence in CF-97-522 is **VACATED** and **REVERSED** and **REMANDED** for a new trial. The Judgment and Sentence in CF-97-414 is **AFFIRMED**.

¹ *Sullinger v. State*, 675 P.2d 472, 473 (Okla. Cr. 1984). Here, Bowers's acts as a caretaker of abusing and neglecting the victim caused the homicide. The medical examiner testified that caretaker neglect caused the victim's dehydration which caused the victim's death. The homicide thus resulted entirely from the precedent felony and was not "independent" of it.

² See *Parker v. State*, 917 P.2d 980 (Okla. Cr. 1996).

³ *Hooper v. State*, 947 P.2d 1090, 1101 (Okla. Cr. 1997).

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OPINION BY: CHAPEL, JUDGE

STRUBHAR, P.J.:	Concur
LUMPKIN, V.P.J.:	Concur In Results
JOHNSON, J.:	Concur in Part/Dissent in Part
LILE, J.:	Concur In Results