

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

STATE OF OKLAHOMA } S.S.
CLEVELAND COUNTY }

FILED

DALLAS C. NORTON,

Appellant,

v.

THE STATE OF OKLAHOMA,

Appellee.

NOT FOR PUBLICATION

JUL 08 2024
In the office of the
Court Clerk MARILYN WILLIAMS

Case No. F-2022-746

FILED
COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

JUL - 3 2024

JOHN D. HADDEN
CLERK

SUMMARY OPINION

LEWIS, JUDGE:

Dallas Christopher Norton, Appellant, was tried by jury and found guilty of Counts 1 and 2, lewd or indecent acts with a child under sixteen, in violation of 21 O.S.Supp.2018, § 1123, in the District Court of Cleveland County, Case No. CF-2019-1273. The jury assessed punishment at twenty-five years imprisonment in each count. The Honorable Thad Balkman, District Judge, pronounced judgment and ordered the sentences served consecutively, suspending all but eighteen years of the sentence in Count 1 and the entire twenty-five year sentence in Count 2. Mr. Norton appeals in the following propositions of error.

1. There was insufficient evidence to prove Mr. Norton was guilty of two counts of lewd molestation beyond a reasonable doubt;
2. The trial court improperly admitted the extremely prejudicial and irrelevant testimony of [a former babysitter] as res gestae evidence at Dallas Norton's jury trial;
3. Dallas Norton was denied due process of law and his right to a fair and impartial jury in violation of the Sixth and Fourteenth Amendments to the United States Constitution, and Article 2, §§ 7, 19 & 20 of the Oklahoma Constitution, when his attorney failed to remove M.K., an obviously biased, tainted, anti-defense juror during voir dire;
4. The State committed prosecutorial misconduct resulting in prejudice to Dallas Norton in this case;
5. Dallas Norton was prejudiced by ineffective assistance of counsel; and
6. The cumulative effect of all these errors deprived Appellant of a fair trial and warrant relief for Dallas Norton.

In Proposition One, Appellant claims there was insufficient evidence to prove two counts of lewd acts with a child under sixteen. We review the evidence in the light most favorable to the State, asking whether any rational trier of fact could have found the elements of the crime beyond a reasonable doubt. *Spuehler v. State*, 1985 OK CR 132, ¶ 7, 709 P.2d 202, 203-04. In this review, we accept all reasonable inferences and credibility choices that tend to support the

verdict. *Coddington v. State*, 2006 OK CR 34, ¶ 70, 142 P.3d 437, 456. We find the evidence sufficient to satisfy due process under this standard. Proposition One is denied.

In Proposition Two, Appellant argues that the trial court erred by admitting certain evidence of Appellant's behavior toward a former family babysitter as part of the *res gestae* of this offense. We review the admission or exclusion of evidence over a timely objection for abuse of the trial court's discretion. *Hancock v. State*, 2007 OK CR 9, ¶ 72, 155 P.3d 796, 813.

We define an abuse of discretion as a clearly erroneous conclusion and judgment, contrary to the logic and effect of the facts presented. *Neloms v. State*, 2012 OK CR 7, ¶ 35, 274 P.3d 161, 170. The trial court found that this evidence was central to the chain of events leading to the discovery of Appellant's crimes, and thus part of the *res gestae*. See *Gillioms v. State*, 2022 OK CR 3, ¶ 36, 504 P.3d 613, 622 (defining *res gestae*). This ruling was not clearly erroneous or contrary to the logic and effect of the facts. Proposition Two is therefore denied.

In Proposition Three, Appellant asserts a violation of due process arising from his attorney's omission to remove what appellate

counsel regards as an obviously disqualified or incompetent juror. We find this tantamount to a claim that the trial court *also* committed plain error in allowing the juror to serve.¹

We thus review for plain or obvious error, *see Arce v. State*, 2023 OK CR 9, ¶¶ 18-22, 530 P.3d 472, 478-79, requiring Appellant to show that any error was plain or obvious and affected the outcome. *Hogan v. State*, 2006 OK CR 19, ¶ 38, 139 P.3d 907, 923. This Court will correct plain error only where the error seriously affected the fairness, integrity, or public reputation of the judicial proceedings or represented a miscarriage of justice. *Id.*

Counsel argues that the fact that the juror's family friend had been sexually abused and a family member had been convicted of lewd acts plainly rendered this juror biased against the Appellant and subject to removal. We disagree. The juror had several family members with a criminal history. Trial counsel may have perceived strategic reasons for foregoing any effort to remove this juror. The record shows no plain or obvious bias or other ground of disqualification. Proposition Three is denied.

¹ Appellant also asserts this claim again in his proposition alleging ineffective counsel.

In Proposition Four, Appellant argues that prosecutorial misconduct led to reversible error. This Court will not grant relief for prosecutorial misconduct unless, viewed in context, misconduct rendered the trial fundamentally unfair, meaning the resulting verdict is unreliable and unworthy of confidence. *Tryon v. State*, 2018 OK CR 20, ¶ 137, 423 P.3d 617, 654. Where the challenged tactics met no objection at trial, we review for plain error only, as defined above. *Bramlett v. State*, 2018 OK CR 19, ¶ 36, 422 P.3d 788, 799. We have reviewed the alleged misconduct identified by the Appellant according to these standards and find no relief is warranted. Proposition Four is denied.

In Proposition Five, Appellant argues that he was denied the effective assistance of trial counsel because counsel “promised to present a case, but wholly failed to do so;” failed to challenge or remove a biased juror as argued in Proposition Three; and failed to object to prosecutorial misconduct as argued in Proposition Four. To prevail on his ineffectiveness claim, Appellant must show that counsel’s performance was deficient and that it prejudiced his defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984).

Having reviewed Appellant's complaints under the *Strickland* analysis, we conclude that Appellant has not rebutted the strong presumption that counsel's choices were the product of a reasonable trial strategy consistent with prevailing professional norms. Nor has Appellant shown a reasonable probability that, but for these alleged errors, the result would have been different. The challenged acts and omissions do not satisfy either prong of the *Strickland* test. Proposition Five is denied.

In Proposition Six, Appellant seeks relief for cumulative error. Cumulative error arguments are precluded when no errors are recognized by the appellate court. *Baird v. State*, 2017 OK CR 16, ¶ 42, 400 P. 3d 875, 886. Finding no errors, this proposition is denied.

DECISION

The judgment and sentence is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2024), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

**APPEAL FROM THE DISTRICT COURT OF CLEVELAND COUNTY
THE HONORABLE THAD BALKMAN, DISTRICT JUDGE**

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OPINION BY: LEWIS, J.
ROWLAND, P.J.: Concur
MUSSEMAN, V.P.J.: Concur
LUMPKIN, J.: Concur
HUDSON, J: Concur

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