

Analysis of Alleged Judicial Error & Failure to Uphold a Fair Trial

A judge's primary duty under the Code of Judicial Conduct is to "uphold and promote the independence, integrity, and impartiality of the judiciary" (Canon 1) and to "perform the duties of judicial office impartially, competently, and diligently" (Canon 2). This requires a judge to be more than a passive observer; they must act as a gatekeeper of evidence and a guardian of constitutional rights, ensuring that legal standards are correctly applied and that the proceedings remain fundamentally fair.

The record in this case reveals several critical junctures where the trial court's rulings and lack of intervention appear to deviate from these principles, particularly in the handling of highly prejudicial and procedurally flawed evidence.

1. Abdication of Gatekeeping Role in Child Hearsay (12 O.S. § 2803.1)

The court's handling of the State's child hearsay evidence demonstrates a significant failure to adhere to the strict procedural safeguards required by Oklahoma law. The purpose of a § 2803.1 hearing is for the judge to independently determine if an out-of-court statement from a child is reliable *before* it is presented to a jury. The record shows the court failed this duty in multiple respects.

A. Procedurally Defective Reliability Hearing:

The State filed a "Notice of Intent to Offer Evidence of Statement of Child," which contained a significant factual error, claiming the victim disclosed abuse "at her grandmother's house in the bedroom while she was coloring." At the January 21, 2022, hearing, the prosecutor admitted this was a "cut and paste" error from another case (**Partial Proceedings 1-21-22, p. 4**).

- **Judicial Error:** The court's failure to strike the State's notice and require a corrected, factually accurate filing was a critical error. A notice based on false information is legally insufficient. By allowing the hearing to proceed on a defective notice, the court violated its duty to enforce procedural rules designed to ensure fairness and prevent surprise. This rendered the entire reliability hearing constitutionally suspect from the outset.

B. Failure to Contemporaneously Review Evidence:

During the same hearing, the court heard testimony from the forensic interviewer, Christi Cornett, about the contents of the recorded interview. However, the judge did not review the video evidence itself at that time, stating: "*I'll take the arguments under advisement, and once I watch the interview that's Exhibit 1, I'll be able to make a determination...*" (**Partial Proceedings 1-21-22, p. 6**). The final ruling was deferred until the middle of the trial, months later.

- **Judicial Error:** This was an abdication of the court's gatekeeping function. A § 2803.1 reliability determination cannot be delegated to a witness's summary. The judge must personally and contemporaneously review the evidence to assess its reliability. By admitting the hearsay based on a witness's characterization and deferring the actual review, the court allowed potentially inadmissible and highly prejudicial testimony to be presented to the jury without a proper and timely legal foundation, violating the principles of *Smith v. State* and *Lugo v. State*.

C. Ignoring Evidence of Coaching and Influence:

The record contained clear indications that the victim's statements were not spontaneous and had been influenced by multiple pre-interview conversations. Forensic interviewer Christi Cornett even conceded that when she asked the victim why she was there, it appeared she had already been told what to expect (**Partial Proceedings 1-21-22, p. 33**). The prosecutor herself,

during a bench conference, acknowledged the victim's prior testimony, stating: "*And she probably is coached some on what is acceptable or what's intended to be discussed and what to expect.*" (**Jury Trial Vol. IV, p. 170**).

- **Judicial Error:** The court had an affirmative duty to consider these strong indicia of coaching when evaluating the reliability of the hearsay statements. Spontaneity and the lack of a motive to fabricate are key statutory factors. The court's failure to address the prosecutor's own admission of "coaching" and other evidence of influence constitutes a clear abuse of discretion. Allowing the hearsay to be presented as "reliable" in the face of this evidence violated Canon 2's requirement of competent and diligent application of the law.

2. Improper Admission of "Res Gestae" Testimony to Circumvent Constitutional Safeguards

The court's decision to admit the testimony of Bailey Ferguson—who alleged unrelated sexual misconduct by the defendant—as *res gestae* was a severe legal error that violated established Oklahoma and federal precedent.

At the January 21, 2022, hearing, the State argued that Ferguson's testimony was necessary to show the "chain of events" that led the victim's mother to become suspicious. The defense argued vehemently that this was improper character evidence that should be excluded under *Burks v. State* and 12 O.S. § 2404(B). The court sided with the State, ruling: "*I see this as a question of res gestae rather than Burks.*" (**Partial Proceedings 1-21-22, p. 19**). This ruling was reaffirmed at trial over renewed objection (**Jury Trial Vol. II, p. 128-129**).

- **Judicial Error:** This ruling was a clear abuse of discretion. *Res gestae* is a narrow exception applicable only when the uncharged act is so inextricably intertwined with the charged crime that it forms part of a single transaction. Ferguson's allegations were entirely separate in time, place, and nature from the acts for which the defendant was on trial. By labeling it *res gestae*, the court improperly circumvented the strict procedural safeguards of *Burks*, which require a hearing, a finding of clear and convincing evidence, a balancing of probative value against prejudicial effect, and a limiting instruction for the jury. The court did none of these, even refusing a defense request for a limiting instruction (**Jury Trial Vol. III, p. 174-175**). This error allowed the jury to hear highly inflammatory propensity evidence without any legal framework to guide its consideration, violating the defendant's right to be tried only for the charged offense.

3. Compounding Errors at the Preliminary Hearing (Judge Puckett)

The preliminary hearing, presided over by Judge Puckett, was the point where the case's foundational flaws should have been addressed. Instead, a series of erroneous rulings allowed a constitutionally defective case to proceed to trial.

A. Failure to Address the Facially Defective Charging Information:

The original Information filed on October 22, 2019, was fundamentally flawed. It charged the defendant with committing a crime against "B.N.J." but then incorrectly stated that he "was at least three years older than N.J.T." (**Information, p. 1**). This is not a mere typographical error; it is a jurisdictional defect. A charging document must correctly identify the victim to be legally sufficient and to provide the defendant with proper notice. An Information that alleges a crime against one person (B.N.J.) but references a different, non-existent person (N.J.T.) in a key element of the charge fails to properly charge a crime.

- **Judicial Error:** Judge Puckett failed to notice or correct this facial defect. Under Canon 2, a judge must competently and diligently perform their duties. Allowing a case to proceed to a preliminary hearing on a charging document that is legally insufficient demonstrates a failure of this duty and set a tone of permissiveness for subsequent, more substantive errors.

B. Allowing Prejudicial Expansion of the Charging Window:

At the conclusion of the preliminary hearing, the State moved to amend the Information, dramatically expanding the timeframe from the original seven months in 2018-2019 to a nearly two-year period from September 2017 to June 2019. The defense objected, arguing the expansion was not supported by the evidence, as the victim's own testimony had narrowed the timeframe to the "middle of fifth grade." The State's only justification was to "put the defendant on notice" that the entire period of cohabitation was at issue (**Prelim Transcript, p. 73**).

- **Judicial Error:** Judge Puckett abused her discretion by granting this amendment. An amendment cannot be used to cure a fatal variance between the State's evidence and its charges. The victim's testimony *narrowed* the timeframe, yet the court allowed the State to *expand* it, severely prejudicing the defendant's ability to prepare a specific alibi defense. This ruling violated the defendant's due process right to fair notice of the charges against him.

C. Allowing an Improper Second Charge for a Single Transaction:

At the conclusion of the preliminary hearing, the State also moved to add a second count of Lewd Acts, separating the alleged touching of the victim's vagina from the alleged act of forcing the victim to touch the defendant's penis. The State's argument for two distinct acts was tenuous, based on the victim rolling over for "seconds or maybe even minutes" (**Prelim Transcript, p. 73**). The defense objected, arguing this was a single, continuous event that could not be split into multiple charges under 21 O.S. § 11.

- **Judicial Error:** Judge Puckett abused her discretion by allowing the State to add Count II. Oklahoma law is clear that a single criminal transaction, even if it involves multiple actions, cannot be divided into separate offenses to stack charges. The testimony described a continuous episode in the same location between the same parties. By allowing the second charge, the judge permitted a violation of the statutory protection against double punishment and subjected the defendant to unfairly multiplied jeopardy based on a single alleged incident.

D. Failure to Properly Apply the Probable Cause Standard:

The defense presented a demurrer, arguing that the victim's testimony, combined with the mother's testimony about the defendant's residency, made the alleged timeline factually impossible. Rather than scrutinizing these contradictions, Judge Puckett overruled the demurrer and bound the defendant over for trial (**Prelim Transcript, p. 74**).

- **Judicial Error:** The probable cause standard requires a judge to determine if a crime was committed and if there is probable cause to believe the defendant committed it. When the State's own witnesses provide testimony that creates a factual impossibility, probable cause fails. By ignoring these profound inconsistencies and binding the case over, Judge Puckett failed in her essential gatekeeping role, allowing a case lacking a coherent factual basis to proceed.

4. Failure to Control Proceedings and Prevent Prosecutorial Misconduct (Judge Balkman)

A judge's most fundamental duty is to ensure a fair trial. This requires actively maintaining order

and decorum and preventing counsel from engaging in improper and prejudicial conduct. Throughout the voir dire and closing arguments, the prosecutors engaged in a pervasive pattern of misconduct, and the trial judge repeatedly failed to intervene, thereby abandoning his role as a neutral arbiter.

- **Judicial Error:** The judge's passivity in the face of over 275 documented instances of prosecutorial misconduct constitutes a profound judicial error. By allowing the prosecutors to repeatedly misstate the law personally vouch for witnesses ("We know she's telling the truth"), shift the burden of proof ("the remedy is not to let a guilty man go free"), and use inflammatory rhetoric ("He made the choice to be a child molester"), the judge permitted the trial to be "so infected with unfairness as to make the resulting conviction a denial of due process." This inaction violated the judge's duty under Canon 2 to ensure fairness and maintain decorum, effectively creating an environment where the State was allowed to operate outside the bounds of law and ethics.

5. Failure to Maintain Impartiality and Decorum During Sentencing (Judge Balkman)

The sentencing hearing on August 31, 2022, reveals a shocking departure from the principles of judicial impartiality and fairness. The judge's conduct and rulings appeared to favor the prosecution and demonstrated a disregard for the defendant's due process rights.

A. Improper Reliance on a Constitutionally Deficient PSI:

The Pre-Sentence Investigation (PSI) report was fundamentally flawed. It explicitly stated: *"Defendant's Version: This information was not requested by the court."* This is a facial violation of 22 O.S. § 982(D) and DOC policy, which mandate the inclusion of the defendant's statement. The report also contained a demonstrably false date for the forensic interview (July 19 instead of July 22) and was admittedly based on the prosecutor's direction to use the Probable Cause Affidavit rather than independent investigation.

- **Judicial Error:** The court had an absolute duty to ensure the PSI was accurate and complied with state law before relying on it for sentencing. The judge's acceptance and consideration of a PSI that was missing the defendant's version and contained material factual errors was a violation of the defendant's due process rights under *Townsend v. Burke* and *Gardner v. Florida*. Sentencing based on misinformation of this magnitude is a constitutional violation.

B. Adoption of the State's Flawed Legal Arguments:

During the sentencing hearing, the prosecutor argued that because the jury had assessed punishment, the court had no power to hear any evidence in mitigation and that the proceeding was merely for "pronouncing judgment." The judge adopted this legally flawed reasoning, stating: *"I am not convinced that the law allows for more than the PSI and all of the evidence that's been considered through over the course of the jury trial... I believe it is correct that the admission of mitigation evidence as well as letters or affidavits in support of the defendant would not be proper."* (**Jury Trial Proceedings 5 sentencing, p. 37**).

- **Judicial Error:** This was a stunning misapplication of the law. While a judge cannot ignore a jury's verdict, they retain broad discretion under 22 O.S. § 991a to suspend a sentence, in whole or in part. The very purpose of a sentencing hearing is to consider factors in mitigation and aggravation to make that determination. The judge's ruling that he could not hear any mitigating evidence was an abdication of his judicial responsibility and created an appearance of partiality, directly contradicting the principles of Canon 1 and Canon 2. The judge's statements and subsequent sentence—which included a partial

suspension—were internally inconsistent and demonstrated a fundamental misunderstanding or misapplication of his sentencing authority.

The combination of these errors—from the defective hearsay hearings to the admission of improper character evidence and the fundamentally unfair sentencing proceeding—paints a picture of a trial process that was not overseen by an impartial and diligent arbiter. Instead, the record suggests a judge who repeatedly failed to enforce critical procedural safeguards, resulting in a cascade of prejudice that rendered the trial and sentence constitutionally infirm.