

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

TERRIL GLEN ELLISON,

Appellant,

v.

THE STATE OF OKLAHOMA,

Appellee.

**NOT FOR PUBLICATION**

Case No. F-2013-949

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

**MAR 20 2015**

**SUMMARY OPINION**

**MICHAEL S. RICHIE  
CLERK**

**LEWIS, JUDGE:**

Terril Glen Ellison, Appellant, was tried by jury and found guilty of Count 1, possession of a controlled dangerous substance with intent to distribute, in violation of 63 O.S.2011, § 2-401; and Count 2, possession of proceeds derived from a violation of the Uniform Controlled Dangerous Substance Act, in violation of 63 O.S.2011, § 2-503.1 in Oklahoma County District Court Case No. CF-2011-6975. The jury found Appellant guilty after former convictions of two (2) or more felonies and sentenced Appellant to thirty-three (33) years imprisonment for Count 1 and fifteen (15) years imprisonment for Count 2. The Honorable Ray C. Elliott, District Judge, pronounced judgment, ordering the sentences served concurrently. Mr. Ellison appeals in the following propositions of error:

1. The state presented insufficient evidence to prove beyond a reasonable doubt the essential elements of possession of proceeds in violation of the due process clauses of the federal and state constitutions;

2. The trial court erred in refusing to require the state to disclose the identity of its confidential informant who was a material witness in the case;
3. The trial court abused its discretion by admitting the jail phone calls made by appellant because any probative value that they might have had was far outweighed by their clear prejudicial effect.

In Proposition One Appellant that the State's evidence was insufficient to support his conviction for possession of proceeds derived from narcotics violations. We review the evidence in the light most favorable to the prosecution, to determine whether any rational trier of fact could have found the essential elements of the crime charged beyond a reasonable doubt. *Spuehler v. State*, 1985 OK CR 132, ¶ 7, 709 P.2d 202, 203-04. Applying this standard, the evidence is sufficient. Proposition One is denied.

Appellant argues in Proposition Two that the trial court erred when it refused to disclose the identity of the confidential informant. We review the refusal to order disclosure of the informant for abuse of the trial court's discretion. *Hill v. State*, 1979 OK CR 2, ¶ 16, 589 P.2d 1073, 1077. An abuse of discretion is a clearly erroneous conclusion and judgment, one that is clearly against the logic and effect of the facts presented. *C.L.F. v. State*, 1999 OK CR 12, ¶ 5, 989 P.2d 945, 946. The government privilege to withhold the identity of an informant is not absolute. Disclosure can be required if the informant is a material witness to a crime with which defendant is charged, or able to give testimony on a material issue. Due process also requires disclosure when necessary and relevant to the defendant's defense. *Corbett v. State*, 1974

OK CR 181, ¶10, 527 P.2d 200, 203; 12 O.S.2011, § 2510. Appellant has not alleged facts sufficient to establish the informant's testimony was material to the charges or necessary to his defense. Proposition Two is without merit.

In Proposition Three, Appellant claims that the trial court abused its discretion in admitting recordings of defendant's phone calls. Appellant failed to timely object to admission of the phone calls at trial; waiving all but plain error. *Simpson v. State*, 1994 OK CR 40 ¶ 2, 876 P.2d 690, 693. To obtain relief Appellant must show that a plain or obvious error affected the outcome of the proceeding. *Simpson*, 1994 OK CR 40, ¶¶ 3, 11, 23, 876 P.2d at 694-95, 698. This Court will correct plain error only if the error "seriously affect[s] the fairness, integrity or public reputation of the judicial proceedings" or otherwise represents a "miscarriage of justice." *Simpson*, 1994 OK CR 40, ¶ 30, 876 P.2d at 701 citing *United States v. Olano*, 507 U.S. 725, 736, 113 S.Ct. 1770, 1779, 123 L.Ed.2d 508 (1993); 20 O.S.2011, § 3001.1. We find the relevance of the recordings was not substantially outweighed by the danger of unfair prejudice or other countervailing factors. Admission of the evidence was not error, and therefore not plain error. Proposition Three requires no relief.

---

### DECISION

The Judgment and Sentence of the District Court of Oklahoma County is **AFFIRMED**. Pursuant to Rule 3.15, Rules of the Court of Criminal Appeals, Title 22, Ch. 18, App. (2015), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

**AN APPEAL FROM THE DISTRICT COURT OF OKLAHOMA COUNTY  
THE HONORABLE RAY C. ELLIOTT, DISTRICT JUDGE**

**APPEARANCES AT TRIAL**

CLAYBURN CURTIS  
DAVID BEDFORD  
ASST. PUBLIC DEFENDERS  
320 ROBERT S. KERR, STE. 611  
OKLAHOMA CITY, OK 73102  
ATTORNEYS FOR DEFENDANT

KIRK MARTIN  
CLAYTON NIEMEYER  
ASST. DISTRICT ATTORNEYS  
320 ROBERT S. KERR, STE. 505  
OKLAHOMA CITY, OK 73102  
ATTORNEY FOR THE STATE

**APPEARANCES ON APPEAL**

MARVA A. BANKS  
OKLAHOMA COUNTY PUBLIC  
DEFENDERS OFFICE  
611 COUNTY OFFICE BUILDING  
OKLAHOMA CITY, OK 73102  
ATTORNEY FOR APPELLANT

E. SCOTT PRUITT  
ATTORNEY GENERAL  
JAY SCHNIEDERJAN  
ASSISTANT ATTORNEY GENERAL  
313 N.E. 21<sup>st</sup> ST.  
OKLAHOMA CITY, OK 73105  
ATTORNEYS FOR APPELLEE

OPINION BY LEWIS, J.  
SMITH, P.J.: Concurs  
LUMPKIN, V.P.J.: Concurs  
A. JOHNSON, J.: Concurs