

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

ARTHELL VERNON TIGER,

Appellant,

v.

THE STATE OF OKLAHOMA,

Appellee.

NOT FOR PUBLICATION

No. M-2013-806

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

APR 30 2015

SUMMARY OPINION

MICHAEL S. RICHIE
CLERK

JOHNSON, JUDGE:

On May 1, 2012, Appellant Tiger was charged with three counts of Violation of a Protective Order in Tulsa County Case No. CM-2012-2266. On August 14, 2013, Tiger was found guilty by a jury of Count 2, and was acquitted of the remaining charges. The District Court of Tulsa County, the Honorable William Hiddle, Special Judge, imposed a \$750.00 fine in accordance with the jury's recommendation. From this Judgment and Sentence Tiger appeals and raises the following issues:

1. The trial court erred when it permitted the State's handwriting expert to express an opinion that Appellant wrote the questioned documents; and
2. The Appellant was deprived of effective assistance of counsel.

The judgment and sentence is **AFFIRMED**.

Tiger was convicted of violating the protective order by sending letters to the victim's daughter and signing the victim up for numerous unwanted newspaper and magazine subscriptions. At trial, the State presented testimony from a

handwriting expert, Gary Szabo. Szabo testified that it was his expert opinion that two of the documents he examined were written by the same person who submitted the known writing samples (Tiger) and that while it was highly probable, he could not say for certain that two other documents submitted for examination were written by Tiger. Tiger did not object to Szabo's qualifications as an expert in handwriting analysis, claiming instead that the trial court erred by permitting Szabo to give his opinion that Tiger wrote the offending documents.

Tiger acknowledges that admissibility of expert evidence is within the trial court's discretion, and the admission of that expert testimony will be reviewed for abuse of discretion. See, *Day v. State*, 2013 OK CR 8, ¶ 11, 303 P.3d 291, 297; *Myers v. State*, 2006 OK CR 12, ¶ 39, 133 P.3d 312, 326; *Ball v. State*, 2007 OK CR 42, ¶ 15, 173 P.3d 81, 86. A review of the record in this matter reveals that Szabo was qualified as an expert; he was extensively cross-examined as to his training in handwriting analysis and the methodology used in examination of the documents in question; and he testified that in his opinion some of the documents were written by Tiger and that it was highly probable that others were written by him.

Szabo's expression of his opinion based upon his analysis of the handwriting evidence is not error. Expert testimony is that which is based on technical or specialized knowledge, skill, training, or education, and which assists the trier of fact. *Day*, 2013 OK CR 8, ¶ 11, 303 P.3d at 297. Expert testimony, including expert opinion testimony is admissible when it will assist the trier of fact to understand the evidence or determine a fact in issue. 12 O.S.2011, § 2702.

Szabo's testimony falls squarely within this criteria. Szabo did not testify that Tiger violated the protective order. Rather, he testified, in his opinion, that the submitted documents were authored by Tiger. The jury was properly instructed that it was not to surrender its own judgment for that of any other person testifying at trial based upon that person's education, training or experience and that it was to use its own judgment in determining whether Tiger committed the charged offense. We find Judge Hiddle did not abuse his discretion in allowing Szabo's testimony.

Tiger next claims that he was denied effective assistance of trial counsel because counsel failed to object to Szabo's testimony. The proper standard to be applied is that found in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Under *Strickland*, a petitioner must show both (1) deficient performance, by demonstrating that counsel's conduct was objectively unreasonable, and (2) resulting prejudice, by demonstrating a reasonable probability that, but for counsel's unprofessional error, the result of the proceeding would have been different. *Strickland*, 466 U.S. at 687-89, 104 S.Ct. at 2064-66. And we recognize that "[a] court considering a claim of ineffective assistance of counsel must apply a 'strong presumption' that counsel's representation was within the 'wide range' of reasonable professional assistance." *Harrington v. Richter*, 562 U.S. 86, 104, 131 S.Ct. 770, 787, 178 L.Ed.2d 624 (2011) (quoting *Strickland*, 466 U.S. at 689, 104 S.Ct. at 2065). As we found it was not error for the trial court to allow Szabo's testimony, counsel cannot have been ineffective for failing to object to the admissible testimony. Tiger's conviction is **AFFIRMED**.

DECISION

Appellant's misdemeanor conviction in Tulsa County District Court Case No. CM-2012-2266 is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma 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 TULSA COUNTY
THE HONORABLE WILLIAM HIDDLE, SPECIAL JUDGE

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OPINION BY: JOHNSON, J.:

SMITH, P.J.: Concur
LUMPKIN, V.P.J.: Concur
LEWIS, J.: Concur
HUDSON, J.: Concur

RA/F

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