

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

TYRONE LAMONT NASH,

Appellant,

v.

THE STATE OF OKLAHOMA,

Appellee.

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)
) NOT FOR PUBLICATION
)

) Case No. F-2014-538
)

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

OCT 27 2015

SUMMARY OPINION

MICHAEL S. RICHIE
CLERK

JOHNSON, JUDGE:

Appellant Tyrone Lamont Nash was tried in a non-jury trial in the District Court of Oklahoma County, Case No. CF-2011-5164, for the crimes of Second Degree Rape (Counts 1-5), in violation of 21 O.S.Supp.2006, § 1111(A)(8) and 21 O.S.Supp.2008, § 1114, and Forcible Oral Sodomy (Counts 6-10), in violation of 21 O.S.Supp.2009, § 888(B)(5), before the Honorable Jerry D. Bass, District Judge. The court found Nash guilty on all counts and sentenced him to ten years imprisonment on each count with all but the first two years suspended. The sentences were ordered to be served concurrently.¹

Nash appeals, raising the following issues:

- (1) whether the statutes under which he was convicted are facially unconstitutional and unconstitutional as applied;
- (2) whether the guilty verdict improperly shifted the burden of proof to him and whether the court's factual findings were inadequate; and

¹ Under 21 O.S.2011, § 13.1, Nash must serve 85% of the sentences imposed on Counts 6 through 10 before he is eligible for parole.

- (3) whether evidentiary rulings denied him of his Sixth Amendment right to present a defense.

We find reversal is not required and affirm the Judgment and Sentence of the district court.

1.

Nash challenges the constitutionality of 21 O.S.Supp.2006, § 1111(A)(8) and 21 O.S.Supp.2009, § 888(B)(5). We find that there is no fundamental constitutional right for teachers to have consensual sex with students in the same school system. *Lawrence v. Texas*, 539 U.S. 558, 573-74, 123 S.Ct. 2472, 156 L.Ed.2d 508 (2003). We further find that sections 1111(A)(8) and 888(B)(5) rationally advance the legitimate state interest of promoting a healthy educational environment and preventing abuses of authority by persons with unique access to, and authority over, students. Title 21 O.S.Supp.2006, §§ 1111(A)(8) and 21 O.S.Supp.2009, § 888(B)(5) are constitutional both facially and as applied to Nash. This proposition of error is denied.

2.

Nash argues in his second proposition that his state and federal constitutional rights to due process were violated because the trial court shifted the burden of proof from the State to him. Nash did not object when this allegedly improper burden of proof was applied. Accordingly, we review for plain error. *Hogan v. State*, 2006 OK CR 19, ¶ 38, 139 P.3d 907, 923. The trial judge incorrectly stated the burden of proof through the use of double

negatives.² It is clear from the record, however, that he did not apply an incorrect burden of proof. Unlike jurors, a judge is presumed to know the law. *Magnan v. State*, 2009 OK CR 16, ¶ 51, 207 P.3d 397, 412. The misstatement was not plain error as it did not affect the outcome of the proceeding and was harmless beyond a reasonable doubt. Furthermore, as Nash correctly notes, the judge was under no legal obligation to state findings of fact supporting each element of the crimes charged. While the trial court noted several findings of fact supporting his judgment, his failure to do so to Nash's satisfaction cannot be found to have denied Nash due process of law.

3.

At trial, the defense sought to introduce evidence of Nash's good character but defense counsel failed to provide relevant authority to the trial court supporting the admissibility of the evidence and it was excluded. He claims this ruling was error which denied him his Sixth Amendment right to present a defense. We review for plain error. *See, e.g., Young v. State*, 2000 OK CR 17, ¶ 49, 12 P.3d 20, 37. In light of the strong evidence presented at trial, we find no plain error in the exclusion of this character evidence. Any error was harmless beyond a reasonable doubt. *See Chapman v. California*, 386 U.S. 18, 24, 87 S.Ct. 824, 828, 17 L.Ed.2d 705 (1967) (holding that "before a federal

² The Court stated, "So because of those findings of facts, the Court finds that no jury could not have found that Mr. Nash was not guilty beyond a reasonable doubt. Therefore, I find Mr. Nash guilty of the charges and no reasonable doubt exists."

constitutional error can be held harmless, the [reviewing] court must be able to declare a belief that it was harmless beyond a reasonable doubt”).

Next Nash complains that the trial court denied him his right to present a complete defense by excluding the testimony of a defense witness on notice grounds. The exclusion of this witness, if error, was harmless beyond a reasonable doubt.

DECISION

The Judgment and Sentence of the district court is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2014), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF OKLAHOMA COUNTY
THE HONORABLE JERRY D. BASS, DISTRICT JUDGE

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OPINION BY: JOHNSON, J.
SMITH, P.J.: Concur
LUMPKIN, V.P.J.: Concur
LEWIS, J.: Concur
HUDSON, J.: Concur

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