IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

RYAN RAY GARCIA,	)	
	)	
Appellant,	)	**NOT FOR PUBLICATION**
	)	
v.	)	**Case No. F-2014-679**
	)	
STATE OF OKLAHOMA,	)	
	)	
Appellee.	)	

OPINION

HUDSON, JUDGE:

Appellant Ryan Ray Garcia was tried by jury and convicted in the District Court of Comanche County, Case No. CF-2012-402, of Murder in the First Degree, in violation of 21 O.S.2011, § 701.7(A).[1] The jury sentenced Garcia to life imprisonment without the possibility of parole. The Honorable Keith B. Aycock, District Judge, presided over the trial and pronounced judgment and sentence. Garcia now appeals. We affirm.

BACKGROUND

This case arises from the stabbing death of Sonny Limpy, an inmate at the Lawton Correctional Facility. The murder occurred on June 13, 2012, just hours after the victim arrived at the prison. The victim was assigned to a pod at the prison known as 2-Charlie. This pod housed Hispanic gang members. At this time, there was a "movement" taking place to consolidate all the

[1] Garcia was also charged with Conspiracy to Commit Murder (Count II), in violation of 21 O.S.2011, § 421. The jury acquitted Garcia of this offense.

Hispanic gangs under the Mexican Mafia. It was the victim's apparent opposition to this "movement" that led to his death.

Shortly after the victim arrived in 2-Charlie pod, inmate Santiago Albarado reported the victim's arrival to Alonzo Flores. Flores was considered the "shot caller", i.e., the inmate that calls all the shots at the prison. Flores advised that he would find out what he could about the victim. Essentially, Flores wanted to determine if the victim was for or against the "movement". Sometime later that day, Albarado met with Flores and his second in command, Armando Luna, in Luna's cell. Flores advised Albarado that the victim was to be killed. While the three were planning the murder, Appellant walked into the cell and Flores enlisted Appellant to participate as a "soldier" in the killing.

The plan was executed later that day. Pursuant to the plan, the murder was to take place in a blind spot under the staircase, by cell 114, which could not be seen on the prison pod cameras. After the victim was lured to the blind spot, Luna was to make a "couple of good organ hits" and then hand the shank off to one of the soldiers (Tr. II 144-45). Thereafter, the soldiers were to drag the victim into cell 114 to finish off the job. The plan however did not go exactly as intended. After being stabbed by Luna a couple of times, the injured victim managed to break free from Appellant and the other soldiers before he could be dragged into cell 114. Two prison cameras caught what transpired from this point forward.

Upon escaping, the victim ran to the front of the pod to seek help from prison officials. The victim's shirt had blood on it in two spots (Tr. II 174). At this point, Appellant retrieved the shank from cell 110, where Flores had taken it after picking it up off the pod floor (Tr. III 11-12). Immediately upon leaving cell 110, Appellant went directly across the pod to the victim and began stabbing him with the homemade knife (Tr. II 150, 173). Two other inmates or "soldiers"—Jose Garcia and Darren Padron—joined in by hitting, kicking and punching the victim until prison officials intervened. The victim died as a result of his multiple stab wounds (Tr. I 262; S.E. 67).

Additional facts will be presented below as needed.

PROPOSITIONS

Law enforcement interviewed Appellant regarding Limpy's murder on three separate occasions. Appellant made statements during the first two interviews, but invoked his right to counsel at the third interview.[2] Appellant filed a pre-trial motion to suppress objecting to the admission of these statements, which precipitated a *Jackson v. Denno*[3] hearing being held to determine the admissibility of Appellant's custodial statements. *See Parent v. State*, 2000 OK CR 27, ¶ 17, 18 P.3d 348, 351-52 ("the long-standing practice in Oklahoma is that when a defendant files a motion to suppress his statement or confession, the trial judge initially determines the voluntary nature of that

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[2] The first interview was conducted on June 13, 2012—the same day the murder occurred. The second interview was conducted the following morning on June 14, 2012. The third interview was attempted on August 24, 2012, approximately two months after the murder occurred.

[3] 378 U.S. 368, 84 S. Ct. 1774, 12 L. Ed. 2d 908 (1964).

statement for purpose of admissibility in a *Jackson v. Denno* hearing"). At the hearing, the trial court gave defense counsel "the floor", noting the motions to be heard had been filed by the defense (1/23/2014 M. Tr. 5).[4] Defense counsel called Lawton Police Department Detective Ken Parsons to testify regarding the voluntariness of Appellant's custodial statements. Detective Parsons explained that he used a waiver form to advise Appellant of his rights. Parsons further testified that Appellant was cognizant, stated he understood his rights and signed the waiver form utilized at the first two interviews.[5] This waiver form, along with the waiver form used at the third interview, was admitted into evidence during the State's cross examination of Detective Parsons.[6] At the conclusion of the hearing, the trial court denied Appellant's motion to suppress.

On appeal, Appellant asserts in his first proposition of error that the trial court erroneously shifted the burden of proof at the *Jackson v. Denno* hearing to the defense. As a result, Appellant argues the State was improperly relieved of its duty to prove Appellant's statements were voluntary and Appellant was improperly required to prove his statements were involuntary. The record in the present case undoubtedly shows confusion existed as to which party bore the burden of proving the voluntary nature of Appellant's custodial statements for purposes of admissibility. However, despite this confusion, we find any

[4] In addition to Appellant's motion to suppress, defense counsel also filed a motion in limine and a motion for discovery.
[5] The same waiver form was used for the interviews conducted on June 13 and 14, 2012.
[6] Despite there being audio and video recordings of the interviews, these recordings were not introduced into evidence at the *Jackson v. Denno* hearing.

error which may have occurred was harmless beyond a reasonable doubt as the record supports the trial court's finding of voluntariness. *See Davis v. State*, 1999 OK CR 16, ¶ 25, 980 P.2d 1111, 1118, *as corrected* (Apr. 15, 1999) (failure to make a proper determination regarding the voluntariness of a defendant's confession is an error of constitutional magnitude, requiring this Court to apply the harmless error test set forth in *Chapman v. California*, 386 U.S. 18, 24, 87 S. Ct. 824, 828, 17 L. Ed. 2d 705, 710–11 (1967)).

"To defeat a motion to suppress, the State bears the burden of proving by a preponderance of the evidence that an accused's challenged statements were voluntary." *Toles v. State*, 1997 OK CR 45, ¶ 25, 947 P.2d 180, 187; *Knighton v. State*, 1996 OK CR 2, ¶ 28, 912 P.2d 878, 887. "The manner in which a statement was extracted is, of course, relevant to the purely legal question of its voluntariness, a question most, but not all, States assign to the trial judge alone to resolve." *Parent v. State*, 2000 OK CR 27, ¶ 26, 18 P.3d 348, 354 (quoting *Crane v. Kentucky*, 476 U.S. 683, 688-89, 106 S. Ct. 2142, 2145-46, 90 L. Ed. 2d 636 (1986)). If the trial court finds the challenged statements voluntary and thus admissible, the jury is also given the opportunity to look at the voluntary nature of the statements and to determine what weight should be given to the statements. *Parent*, 2000 OK CR 27, ¶¶ 17, 22, 18 P.3d at 352.

In *Thomas v. State*, 1987 OK CR 113, ¶¶ 12-17, 741 P.2d 482, 486-87, this Court addressed whether the trial court improperly admitted Thomas' confession after requiring Thomas to bear the burden of proving his confession was not voluntary. The Court reviewed the record and rejected Thomas' claim,

finding Thomas "was properly advised of his constitutional rights, that he understood them, and that the trial court properly admitted the confession for the jury to consider the issues of voluntariness and truthfulness." *Id.*, 1987 OK CR 113, ¶ 17, 741 P.2d at 487. Thomas' claim was likewise rejected in *Thomas v. Cowley,* No. 90-6105, 1991 WL 151773 (10th Cir. Aug. 8, 1991) (unpublished). In doing so, the federal habeas court observed that "the *Jackson v. Denno* procedure is not 'framed in terms of a burden of proof,' but only that the trial judge would admit into evidence confessions found to be voluntary by a preponderance of the evidence." *Id.,* at *6 (quoting *Lego v. Twomey,* 404 U.S. 477, 486, 92 S. Ct. 619, 625, 30 L. Ed. 2d 618 (1972)).

Thus, as is demonstrated by the *Thomas* cases, whether the burden of proof was improperly shifted in error or not, the analysis is the same—does the record sufficiently support the trial court's finding of voluntariness. As set forth in *Coddington v. State,* 2006 OK CR 34, ¶ 33, 142 P.3d 437, 447:

> Voluntariness of a confession is judged by examining the totality of the circumstances, including the characteristics of the accused and the details of the interrogation. *Van White v. State,* 1999 OK CR 10, ¶ 45, 990 P.2d 253, 267. The inquiry has two aspects—the relinquishment of the right must be voluntary in that it was a product of free, deliberate choice, rather than coercion, intimidation or deception; and, the waiver must have been made with a full awareness of the nature of the right being abandoned and the consequences of the decision to abandon it. *See Moran v. Burbine,* 475 U.S. 412, 421, 106 S. Ct. 1135, 1141, 89 L. Ed. 2d 410, 421 (1986). The trial court may properly find a valid waiver of *Miranda* rights where the totality of the circumstances show both an "uncoerced choice and the requisite level of comprehension...." *Id.; see also Lewis v. State,* 1998 OK CR 24, ¶ 34, 970 P.2d 1158, 1170, *cert. denied,* 528 U.S. 892, 120 S. Ct. 218, 145 L. Ed. 2d 183 (1999).

In the present case, we find the trial court's finding of voluntariness is sufficiently supported by the record. Appellant was properly advised of his constitutional rights by Detective Ken Parsons. Based on Appellant's "appearance, behavior, and demeanor", Detective Parson's testified Appellant appeared to understand his rights (1/23/2014 M. Tr. 23). Moreover, Appellant formalized his waiver each time by signing an Advice of Rights Form and agreeing to speak with investigators. While there was some testimony that Appellant may have been scared or concerned about what other inmates might do to him if he talked, this fear does not undermine the trial court's finding of voluntariness as Appellant's fear did not relate to the interviewers or their interview tactics. *See Colorado v. Connelly*, 479 U.S. 157, 164, 107 S. Ct. 515, 520, 93 L. Ed. 2d 473 (1986) (coercive police conduct causally related to a defendant's confession is a necessary predicate to finding a confession involuntary within the meaning of the due process clause).

Therefore, applying the test set forth in *Chapman v. California,* 386 U.S. 18, 24, 87 S. Ct. 824, 828, 17 L. Ed. 2d 705, 710–11 (1967), we find any procedural error relating to the burden of proof at Appellant's *Jackson v. Denno* hearing was harmless beyond a reasonable doubt. Moreover, based on the record evidence as a whole, we find Appellant would have been found guilty even absent the introduction of his challenged statements. *See Davis v. State,* 1999 OK CR 16, ¶¶ 24-26, 980 P.2d 1111, 1118, *as corrected* (Apr. 15, 1999). The events captured on the two prison video cameras combined with the testimony presented at trial was sufficient to prove Appellant stabbed the

victim multiple times with the intent to kill. Appellant's first proposition of error is thus denied.

In his second proposition of error, Appellant contends the trial court abused its discretion by admitting sixteen autopsy photographs of the victim's wounds (S.E. 37-53). Appellant timely objected arguing that "one or maybe two autopsy pictures" were relevant but "not 15 or 16" photographs (Tr. I 263). The trial court overruled Appellant's objection finding the photographs each depicted separate wounds and thus were "all relevant for different reasons." On appeal, Appellant asserts the trial court's ruling actually failed to address the crux of his 12 O.S.2011, § 2403 objection—that the prejudicial effect of the photographs substantially outweighs their probative value. Appellant submits that only the photographs of the two fatal wounds should have been admitted.

We review a trial court's decision to admit photographs for an abuse of discretion. *Le v. State,* 1997 OK CR 55, ¶ 25, 947 P.2d 535, 548. Upon review, we find no abuse of discretion occurred here. "This Court has consistently held the test for admissibility of a photograph is not whether it is gruesome or inflammatory, but whether its probative value is substantially outweighed by the danger of *unfair* prejudice." *Bernay v. State,* 1999 OK CR 37, ¶ 18, 989 P.2d 998, 1007 (emphasis added), *cert. denied,* 531 U.S. 834, 121 S. Ct. 92, 148 L. Ed. 2d 52 (2000). Photographs that are otherwise relevant should not be admitted if their probative value is outweighed by the danger of prejudice. *Le,* 1997 OK CR 55, ¶ 25, 947 P.2d at 548. "The probative value of photographs of murder victims can be manifested in numerous ways, including

showing the nature, extent and location of wounds . . . and corroborating the medical examiner's testimony." *Warner v. State*, 2006 OK CR 40, ¶ 167, 144 P.3d 838, 887. In the present case, the challenged photographs show the nature, extent and location of the victim's wounds. And together, the photographs—including those of the victim's more superficial wounds—demonstrate Appellant's intent to kill. Moreover, the photographs of the victim's numerous wounds were rather sterile and clinical as the wounds for the most part had been cleaned of any excess blood. Thus, the probative value of the photographs was not outweighed by the danger of unfair prejudice. This proposition of error is denied.

In his third and final proposition of error, Appellant asserts the prosecutor improperly invoked societal alarm and inflamed the passions of the jury with his own personal opinion of Appellant's guilt during closing arguments. As a result of these alleged errors, Appellant contends that at a minimum the prosecutor's inappropriate arguments require a sentence modification. "This Court will not grant relief based on prosecutorial misconduct unless the State's argument is so flagrant and so infects a defendant's trial that the trial is rendered fundamentally unfair." *Williams v. State*, 2008 OK CR 19, ¶ 124, 188 P.3d 208, 230. "[W]e evaluate alleged prosecutorial misconduct within the context of the entire trial, considering not only the propriety of the prosecutor's actions, but also the strength of the evidence against the defendant and the corresponding arguments of defense counsel." *Hanson v. State*, 2009 OK CR 13, ¶ 18, 206 P.3d 1020, 1028.

In the present case, only one of the two instances of prosecutorial misconduct alleged drew an objection below and that claim does not show error. The other challenged comment which was not met with objection will be reviewed for plain error only. *See Malone v State,* 2013 OK CR 1, ¶¶ 40-41, 293 P.3d 198, 211, *cert. denied,* ___ U.S. ___, 134 S. Ct. 172, 187 L. Ed. 2d 119 (2013); *Hogan,* 2006 OK CR 19, ¶ 38, 139 P.3d at 923. To be entitled to relief under the plain error doctrine, Appellant must prove: 1) the existence of an actual error (i.e., deviation from a legal rule); 2) that the error is plain or obvious; and 3) that the error affected his substantial rights, meaning the error affected the outcome of the proceeding. *Levering v. State,* 2013 OK CR 19, ¶ 6, 315 P.3d 392, 395; 20 O.S.2011, § 3001.1. If these elements are met, 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." *Levering,* 2013 OK CR 19, ¶ 6, 315 P.3d at 395 (quoting *Simpson v. State,* 1994 OK CR 40, ¶ 30, 876 P.2d 690, 701 and 20 O.S.2011, § 3001.1).

Appellant first asserts the prosecutor inappropriately argued Appellant "didn't look like he was very afraid to me. He looked like he was a killer." (Tr. III 102). Defense counsel did not object to this comment. Reading the challenged comment in context and considering the corresponding arguments of defense counsel as well as the strength of the evidence, we find nothing in this challenged remark that deprived Appellant of a fair trial. *See Harmon v. State,* 2011 OK CR 6, ¶ 80, 248 P.3d 918, 943. The single use of the word

"killer" did not affect the verdict. *See Browning v. State*, 2006 OK CR 8, ¶ 38, 134 P.3d 816, 839-40. Thus, finding no error, plain or otherwise, this claim fails.

The second remark challenged by Appellant occurred when the prosecutor argued, "I submit to you this man belongs behind bars away from you and me." (Tr. III 102-3). The trial court sustained defense counsel's objection to this remark on the grounds of societal alarm and admonished the jury (O.R. 103). We find the trial court's admonishment in this case cured any potential error. *See Hammon v. State,* 1995 OK CR 33, ¶ 81, 898 P.2d 1287, 1305 (trial court's admonishment cures any potential error); *Mike v. State*, 1988 OK CR 205, ¶ 7, 761 P.2d 911, 913 (when admonitions by the trial court are sufficient to cure any error, modification or reversal is not warranted). *See also Smith v. State*, 2013 OK CR 14, ¶ 38, 306 P.3d 557, 571 *cert. denied*, ___ U.S. ___, 134 S. Ct. 2662, 189 L. Ed. 2d 213 (2014) (absent some indication to the contrary, we presume that a trial court's admonition to disregard improper commentary was followed by the jurors). Appellant therefore has failed to show error occurred which affected the outcome of the proceedings.

Appellant's final proposition of error is denied.

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. (2015), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF COMANCHE COUNTY
THE HONORABLE KEITH B. AYCOCK, DISTRICT JUDGE

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