

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

HARVEY RANDALL WILSON,

Appellant,

v.

THE STATE OF OKLAHOMA,

Appellee.

NOT FOR PUBLICATION

Case No. F-2014-1005

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

MAR -1 2016

OPINION

MICHAEL S. RICHIE
CLERK

LEWIS, JUDGE:

Appellant, Harvey Randall Wilson, was tried by jury and found guilty of Count 1, conspiracy to commit a felony (burglary and/or first degree murder), in violation of 21 O.S.2011, § 421; Count 2, murder in the first degree, in violation of 21 O.S.2011, § 701.7(A); and Count 3, burglary in the second degree, in violation of 21 O.S.2011, § 1435; in the District Court of Cleveland County, Case No. CF-2013-576. The jury sentenced Appellant to ten (10) years imprisonment and a \$5,000 fine in Count 1, life imprisonment without the possibility of parole and a \$10,000 fine in Count 2, and seven (7) years imprisonment and a \$10,000 fine in Count 3. The Honorable Lori Walkley, District Judge, pronounced judgment and ordered the terms of imprisonment served consecutively, but declined to impose the fines assessed by the jury. Mr. Wilson appeals.

FACTS

Sometime in the late spring or summer of 2012, Shelia Stanley ended a personal relationship with Appellant that had lasted several months. Appellant was angered by the breakup and became preoccupied with ways to retaliate against Shelia Stanley. His enmity went beyond idle threats. Appellant filed false complaints against Stanley with police and the nursing board, accusing her of drugging him and sexually assaulting him without his consent. He offered bribes to two of his daughter's high school friends in exchange for their false statements supporting his rape claims. He spoke of other plans for revenge, too: breaking Shelia Stanley's hand to ruin her nursing career, stealing a safe from her home, and killing her by injecting her with an overdose.

Appellant's decision to kill Shelia Stanley eventually led his daughter Sarah to introduce him to another social acquaintance, then eighteen year-old Bryson Baker. Baker was homeless when he met the Appellant sometime in late November, 2012. Appellant offered him money, a place to stay, and a car in exchange for his help in burglarizing Shelia Stanley's home, stealing her property, and killing her. Baker accepted his offer, and a conspiracy to murder Shelia Stanley was formed.

Early in the morning of December 7, 2012, Appellant dropped Bryson Baker off near Shelia Stanley's residence, then drove to Lawton, where he stayed for two days. Baker entered Stanley's house, apparently through an

unlocked window known to the Appellant, and remained inside for several hours. Shelia Stanley eventually returned home. Bryson Baker surprised and attacked her in her bathroom, striking her with a crowbar and stabbing her repeatedly. Baker, who was in phone contact with Appellant during the break-in, then called Sarah Wilson to pick him up, as previously arranged. He used a cell phone to photograph the victim's lifeless body; and stole a small home security safe, an iPod, and two liquor bottles before he left.

A concerned friend of Shelia Stanley was unable to reach her by phone on the morning of December 8, 2012. After finding Ms. Stanley's car parked in the driveway and the front door of her residence suspiciously standing open, the friend called police. An Oklahoma City police officer discovered Ms. Stanley's body lying in the bathroom of her home. The bloody knife used to kill her lay on the floor nearby. Two small syringes were found on the bathroom counter, covered by a hand towel. Police also recovered a small plastic baggie containing white powder on a dresser, and a glove lying behind Shelia Stanley's body.

Shelia Stanley's murderer had lacerated her head and fractured her skull with a heavy metal object, likely knocking her unconscious. The killer also stabbed her eight times, inflicting at least five wounds that could be individually fatal. Investigators developed a DNA profile from the baggie and the glove at the crime scene, which they later matched to the known DNA of Bryson Baker. Shelia Stanley's small safe, her cell phone, an iPod, and some

costume jewelry were missing. Several days after the crime, the victim's daughter also discovered that a rear window was unlocked.

Police eventually identified Appellant as a former boyfriend of the victim and possible suspect. His cell phone records reflected a suspicious flurry of contacts on the day of the murder. When contacted by police, Appellant was anxious to appear cooperative and tell what he knew, apparently against the advice of his attorney. He eagerly proved to investigators that he had inside knowledge of the crime, asking them if syringes had been recovered. In these initial statements, Appellant denied any foreknowledge or involvement in the burglary or murder and deliberately misled investigators by casting their suspicions on the troubled young man who had been living in his home, Bryson Baker.

Appellant told police he had realized Baker's involvement when he saw a picture of Shelia Stanley on a cell phone, and some of Stanley's jewelry, both in a bag belonging to Baker. He also told them that two of his syringes and one of his collectible knives had gone missing while Baker was a guest in his home. He complained to police that Baker had been threatening Sarah Wilson. He minimized his injured feelings toward Stanley and downplayed his role in reporting her to the nursing board. Appellant shared the fortuitously-timed trip to Lawton on the day of the murder, pointing out his use of the ATM machine, his visit to the casino, and other verifiable details of his whereabouts.

Other evidence presented at trial indicates that Appellant had set in motion a sinister plot to kill Shelia Stanley. In late November 2012, Appellant had a conversation with Sarah Wilson and one of her then fifteen year-old female friends, H.M., who was also staying with Sarah and Appellant at the time. H.M. testified at trial that Appellant had asked about the quantity of methamphetamine it would take to kill someone, and how to obtain it. Sarah Wilson told H.M. that Appellant wanted to get rid of Shelia Stanley. When he learned that H.M. had used methamphetamine, Appellant had H.M. get a liquid medicine syringe from the refrigerator and show him the approximate amount of a fatal dose. When Appellant asked the girls where he could obtain methamphetamine, Sarah Wilson identified Bryson Baker as a possible source. Appellant called Baker, and later that same night, Sarah Wilson and H.M. brought Baker to Appellant's house.

H.M. testified that she subsequently overheard a series of discussions in which Appellant, Sarah Wilson, and Bryson Baker planned the murder of Shelia Stanley. The schemes took alternating forms. In one plan, Appellant and Baker would break in to Shelia Stanley's home together, steal her safe, and kill her with a fatal dose of methamphetamine. Another involved Appellant dropping Baker off at Stanley's home. Baker would then steal her safe and kill her while Appellant was out of town. Sarah Wilson would pick Baker up when "it was done." H.M. testified that Appellant promised Baker money, a car, and

a place to live. Shortly after this initial meeting in late November, 2012, Baker had moved into Appellant's house.

H.M. also testified to events after the murder. She recalled the evening in early December, 2012, when Sarah Wilson received a phone call from Bryson Baker. Wilson left to pick up Baker, and they later joined H.M., her mother, and her aunt for dinner at a Yukon restaurant. After leaving the restaurant together, Baker, Wilson, and H.M. partied with friends and drank from two bottles of alcohol stolen from Shelia Stanley's home. H.M. also saw the safe stolen in the burglary hidden in the trunk of Sarah Wilson's car. Baker showed H.M. a cell phone photograph in which she recognized Shelia Stanley's body slumped on a floor.

Appellant had gone out of town at the time of the murder. Upon his return a few days later, Appellant told H.M. to look up the news story about Shelia Stanley on his laptop. He commented that he didn't understand how Bryson Baker even knew Shelia Stanley. H.M. knew the truth, but was frightened for her safety and played along. Sarah Wilson also later showed H.M. a bag containing jewelry and said it was Shelia Stanley's. H.M. continued living with Appellant and Sarah Wilson until March, 2013, then moved back in with her parents. When Sarah Wilson contacted H.M. in early April, 2013, and told her they needed to meet and "get our stories straight" for the ongoing investigation, H.M. instead contacted police and gave her account of the conspiracy and murder.

Sarah Wilson was adjudicated and sentenced as a juvenile for her role as an accessory to Shelia Stanley's murder. She testified for the State at Appellant's trial that he had spoken to her and her friends of ruining Shelia Stanley's nursing career, breaking her hand, or having her killed. Appellant had asked her how much methamphetamine it would take to kill someone. He had contacted Bryson Baker when she identified Baker as a possible source of methamphetamine. Sarah Wilson confirmed that Appellant wished to hurt Shelia Stanley personally and professionally, and had recruited her and Bryson Baker as helpers in his scheme.

The final plan involved Appellant dropping Bryson Baker near the victim's house and leaving town. Baker would burglarize Shelia Stanley's home and steal her safe. Sarah Wilson would wait for a phone call, and pick Baker up after the break-in. Wilson testified that when she eventually picked up Baker around 5:30 p.m. that evening, he told her that Ms. Stanley had surprised him during the break in, at which point he "got scared" and "killed her." Baker admitted to Wilson that he had struck Ms. Stanley with a crowbar and stabbed her repeatedly.

Wilson testified that Baker was carrying a duffel bag when she picked him up. Inside the bag were some tools and Shelia Stanley's small safe. Baker also gave Sarah Wilson the victim's iPod. Baker had shown her the same digital photograph of Shelia Stanley's body seen by H.M., explaining it was to provide proof for the Appellant. Sarah Wilson later hid the duffel bag at the

homes of various friends. A friend later sold jewelry from the safe and divided the proceeds with her. She also testified that the knife recovered from the crime scene belonged to the Appellant.

Sarah Wilson denied any knowledge of a plan to kill Shelia Stanley, but conceded she was not involved in every conversation between Appellant and Baker about their plans. She also testified that she was afraid of her father, who had broken her nose when she was twelve, then forced her to falsely accuse his ex-girlfriend of doing it.

When Appellant testified at trial, he admitted that he conspired with Bryson Baker to burglarize Shelia Stanley's house and steal her safe. He denied the testimony of other witnesses about statements expressing his wish or intent to hurt or kill Shelia Stanley, and specifically denied conspiring with Bryson Baker to kill her. He claimed that he was emotionally devastated by the unexpected killing of Shelia Stanley, but lied to police to avoid prosecution for his role in the burglary.

On cross-examination, Appellant admitted that he had hired and paid an attorney to pursue his complaint against Ms. Stanley with the state nursing board. He also admitted that for almost two months after Stanley's murder, he had withheld from police his knowledge of photographic and physical evidence of the crime, during which the evidence was lost or destroyed. He agreed that he was angry with Shelia Stanley over the break up, but denied involvement in any plan to kill her.

ANALYSIS

In Proposition One, Appellant claims that the “sheer volume” of irrelevant, cumulative, and prejudicial evidence at his trial denied him due process of law. He admits this allegedly irrelevant and prejudicial evidence met no objection at trial, waiving all but plain error. *Simpson v. State*, 1994 OK CR 40, ¶ 2, 876 P.2d 690, 692-93. To obtain relief, Appellant must show that a plain or obvious error affected the outcome of the trial. *Hogan v. State*, 2006 OK CR 19, ¶ 38, 139 P.3d 907, 923. The decision to correct error forfeited by the failure to object is within the sound discretion of this Court, to be exercised only where the error seriously affects the “fairness, integrity or public reputation of judicial proceedings.” *Simpson*, 1994 OK CR 40, ¶ 30, 876 P.2d at 700-1.

Appellant cites two pieces of allegedly irrelevant and prejudicial evidence in support of this claim, both from his own statements to police. In one statement, on a recorded telephone call with a police detective, Appellant said he knew how to “Jew” when describing his business expertise. In another, during his longer video-recorded statement to police, Appellant once used the phrase “ni**er-rigged.” Absent any timely objection, we must determine whether the admission of this evidence at trial was a plain or obvious legal error under the governing rules of evidence.

Relevant evidence is defined as evidence having any tendency to make the existence of a fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. 12 O.S.1991, § 2401. Relevant evidence is generally admissible, but may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, undue delay, needless presentation of cumulative evidence, or unfair and harmful surprise. 12 O.S.2011, §§ 2402-2403.

The trial court's admission or exclusion of evidence over a timely objection or offer of proof is ordinarily discretionary and will not be reversed on appeal unless clearly erroneous or manifestly unreasonable. *Hancock v. State*, 2007 OK CR 9, ¶ 72, 155 P.3d 796, 813. 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.

Appellant's statements to police were obviously probative of his attempts to mislead police, deflect suspicion from himself, and cast suspicion on others to avoid prosecution and punishment. Appellant's willingness to make false and misleading statements about his knowledge of a burglary and murder makes his involvement in those crimes more probable than it would be without the evidence. These statements on the whole clearly satisfy the basic test of relevance.

In *Jackson v. State*, 2007 OK CR 24, 163 P.3d 596, the prosecution offered evidence of a murder defendant's statements falsely implicating a non-existent African American man in the crimes. The evidence included appellant's racist comments about this fictitious perpetrator. The Court found that the racist comments were "arguably both irrelevant and prejudicial," but due to other overwhelming evidence of guilt, no relief was warranted. *Id.*, 2007 OK CR 24, ¶ 18, 163 P.3d at 602

Likewise, Appellant's brief use of racist language here was of marginal relevance to the issues on trial. However, this evidence likely had no substantial influence on the outcome in light of other strong evidence of Appellant's guilt. The admissibility of the evidence was debatable; and its admission, without an objection, was not a plain or obvious error under the applicable rules of relevance. Even if it were error, Appellant has not shown that the error seriously affected the fairness, integrity, or public reputation of this proceeding. Proposition One is therefore denied.

In Proposition Two, Appellant argues the evidence is insufficient to support his conviction for first degree murder. He claims that based on the evidence at trial, "no rational trier of fact could have found beyond a reasonable doubt that [he] intended to kill Shelia Stanley." Appellant relies principally on the testimony of his daughter and co-conspirator, Sarah Wilson, and his own trial testimony, "that there was no discussion of killing Ms. Stanley;" and that at most, he only intended to "harm" the victim. He also complains that

prosecutors repeatedly distorted the legal standard of liability by emphasizing the intentions and acts of his co-conspirator Bryson Baker.

This Court will not disturb the verdict of a jury where the evidence, viewed in the light most favorable to the State, permits any rational trier of fact to find the essential elements of the charged crime beyond a reasonable doubt. *Spuehler v. State*, 1985 OK CR 132, ¶ 7, 709 P.2d 202, 203-204. The Court accepts all reasonable inferences and credibility choices that tend to support the verdict. *Warner v. State*, 2006 OK CR 40, ¶ 35, 144 P.3d 838, 863.

The State's evidence, if believed, established that Appellant and Bryson Baker repeatedly discussed plans to burglarize Shelia Stanley's home, steal her property, and kill her; and carried out those plans. The Court has found such evidence sufficient to support a first degree murder conviction on similar facts in *Moss v. State*, 1994 OK CR 80, 888 P.2d 509, where the defendant had solicited at least three men, and entered an agreement with at least one, to kill her husband. One conspirator, the appellant's brother, later entered the victim's home and carried out the murder. The Court in *Moss* said:

The law is well settled that when a conspiracy is entered into to do an unlawful act, the conspirators are responsible for *all that is said or done pursuant to the conspiracy by their co-conspirators* until the purpose has been fully accomplished.

Id., 1994 OK CR 80, ¶ 38, 888 P.2d at 518 (emphasis added).

Appellant's claim that the State's evidence was legally insufficient fails on at least two grounds. First, it misapprehends the controlling principles of

vicarious criminal liability in a conspiracy. In his trial testimony, Appellant admitted that he conspired with Bryson Baker to commit a burglary. It was in furtherance of this conspiracy, from which Appellant admittedly had not withdrawn, that Bryson Baker killed the victim. This alone is more than sufficient to support Appellant's conviction for first degree murder. The Court said in *Matthews v. State*, 2002 OK CR 16, 45 P. 3d 907:

[T]he responsibility of co-conspirators for the language or conduct of those acting with them is *not confined to the accomplishment of the common purpose for which the conspiracy was entered into . . .* Rather, it extends to and includes all declarations made and collateral acts done incident to and growing out of the common design when spoken or done by a co-conspirator as against all of his co-conspirators.

Id., 2002 OK CR 16, ¶ 42, 45 P. 3d at 921(emphasis added); *see also, Huckaby v. State*, 1990 OK CR 84, 804 P.2d 447 (holding conspirator in similar contract murder was guilty in murder of *second* victim, even if co-conspirator formed intent to kill second victim instantly before shooting her); *Shetsky v. State*, 1955 OK CR 117, ¶ 5, 290 P.2d 158, 160 (finding conspirator in burglary was liable for co-conspirator's assault on pursuing officers); *Holmes v. State*, 1912 OK CR 16, 119 P. 430 (holding that when co-conspirator in conspiracy to commit robbery kills robbery victim to escape apprehension, all conspirators are guilty of the murder).

Second, Appellant's claim that the record is devoid of evidence of his intent to kill the victim is specious. H.M.'s trial testimony, if believed,

established a conspiracy between Appellant, Baker, and Sarah Wilson to carry out specific overt acts in furtherance of a plot to kill Shelia Stanley. Appellant would transport the killer to the victim's home, then leave town. Baker would enter the home, steal the victim's property, kill her, and call Sarah Wilson to pick him up. Sarah Wilson would retrieve Baker from the crime scene and thus abet his escape.

The evidence indicates this is precisely what happened. The jury could have reasonably inferred that Appellant and his daughter both hoped to minimize evidence of his intent to kill, and thus disbelieved their biased and self-serving trial testimony denying this intent.¹ In the light most favorable to the State, the evidence shows that Appellant conspired with others to burglarize Shelia Stanley's home, steal her property, and kill her; and that he acted with the express intention that this plan be fully executed. Proposition Two is therefore denied.

In Proposition Three, Appellant argues that prosecutorial misconduct in closing arguments denied him a fair trial. Some of the challenged arguments met with objection, while others did not, waiving all but plain error as defined above. In any case, appellate relief will be granted only where prosecutorial misconduct at trial was fundamentally unfair and rendered the verdict unreliable. *Roy v. State*, 2006 OK CR 47, ¶ 29, 152 P.3d 217, 227. We

¹ This inference is consonant with the jury's rejection of the instructional option to find Appellant guilty of second degree felony murder, based on a factual theory that Appellant merely aided and abetted a second degree burglary in which death resulted.

evaluate alleged prosecutorial misconduct within the context of the entire trial, considering the propriety of the prosecutor's actions, the strength of the evidence, and the corresponding arguments of defense counsel. *Mitchell v. State*, 2010 OK CR 14, ¶ 97, 235 P.3d 640, 661. Counsel are entitled to a wide range of discussion and illustration in closing argument, and may fully discuss from their standpoint the evidence, and the inferences and deductions arising from it. We will reverse the judgment or modify the sentence only where grossly improper and unwarranted argument affects a defendant's rights. *Sanchez v. State*, 2009 OK CR 31, ¶ 71, 223 P.3d 980, 1004.

The State's initial arguments regarding Appellant's liability for murder as a co-conspirator to burglary drew a defense objection which the trial court effectively sustained.² Convinced that a first degree murder conviction required

² Without objection, the trial court had correctly instructed the jury according to OUJI-CR(2d) 2-19A:

When a conspiracy is entered into to do an unlawful act, the conspirators are *responsible for all that is said and done in furtherance of the conspiracy by their co-conspirators*. If two or more persons conspire to commit a crime, each is criminally responsible for the acts of his/her co-conspirators in *furtherance of the conspiracy, or where the connection between the acts and the conspiracy is reasonably apparent*.

Therefore, if you find beyond a reasonable doubt that Harvey Randall Wilson was a member of a conspiracy, and that another conspirator committed the crime of Burglary, Second Degree and/or Murder, First Degree—Deliberate Intent in furtherance of, or as a foreseeable consequence of, the conspiracy, then you may find Harvey Randall Wilson guilty of Burglary, Second Degree and/or Murder, First Degree—Deliberate Intent, even though Harvey Randall Wilson may not have participated in any of the acts that constitute the crime of Burglary, Second Degree and/or Murder, First Degree—Deliberate Intent (emphasis added).

a jury finding of Appellant's intent to kill, the trial court gave three additional instructions regarding liability as an aider and abettor;³ and ruled that:

we must have argument—and the jury must find . . . that Mr. Wilson did or did not have the intent for the crime of murder in the first degree. And if they do not so find, then they have available to them the lesser included offense of felony murder.

Reviewing the challenged arguments within the context of the evidence and these instructions, we find nothing grossly improper or unwarranted. The State clearly *would have been* correct in arguing that Appellant could be convicted of first degree murder, *either* for the acts of his co-conspirator in furtherance of the conspiracy to commit burglary, *or* for the acts of his co-conspirator in furtherance of the conspiracy to murder. The trial court's restriction of these legally tenable prosecution arguments was arguably an error in Appellant's favor.⁴

The prosecutors' remaining arguments fairly embraced the trial court's instructions and were fair comments on the evidence that Appellant had conspired with others to burglarize and/or murder Shelia Stanley. Considering the additional instructions on liability for principals who aid or abet with

³ These additional instructions, OUJI-CR(2d) Nos. 2-5, 2-6, and 2-9, collectively informed the jury that Appellant's liability as a principal for the murder required proof that he aided or abetted that crime either with criminal intent or with knowledge of the other person's intent to commit the specific crime, i.e., first degree murder.

⁴ The prosecutors abided by the court's ruling for the remainder of their first and second closing arguments, at one point saying: "[I]f you believe that Harvey Wilson's *only agreement* with Bryson Baker was to break-in and steal . . . then as a co-conspirator, Harvey Wilson is guilty of Murder II." (emphasis added). The State obviously suffered no prejudice from the trial court's error.

criminal intent, and the lesser included offense of second degree felony murder,⁵ we are confident that the jury based its verdict on an explicit finding of Appellant's intent to kill. Appellant has not shown error, much less plain error, in the closing arguments of the State. Proposition Three requires no relief.

Proposition Four argues that the cumulative effect of errors in Appellant's trial warrants reversal of the convictions or modification of the sentences. We found any error in the admission of Appellant's brief racist comments in statements to police was minor, and had no substantial influence on the outcome. Evidence of Appellant's complicity in this senseless and brutal murder was far more prejudicial than his racial insensitivity. The individual errors were harmless, and no other errors appear in the record. Appellant has not shown that the accumulation of errors in this case had a prejudicial effect on his convictions or sentences. *Sanchez*, 2009 OK CR 31, ¶ 105, 223 P.3d at 1013. Proposition Four is denied.

⁵ Defense counsel made use of these favorable instructions when he told jurors in closing argument, without objection from the State, that "unless you find . . . Harvey Wilson entered into an agreement with Bryson Baker, that I want you to go into her house and wait for her and kill her, well, then, he's not guilty of murder in the first degree."

DECISION

The Judgment and Sentence of the District Court of Cleveland County is **AFFIRMED**. Pursuant to Rule 3.15, Rules of the Court of Criminal Appeals, Title 22, Ch. 18, App. (2016), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

**AN APPEAL FROM THE DISTRICT COURT OF CLEVELAND COUNTY
THE HONORABLE LORI WALKLEY, DISTRICT JUDGE**

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

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