

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

MIGUEL ANGEL CHAVIRA,)
)
Appellant,)
)
v.)
)
THE STATE OF OKLAHOMA,)
)
Appellee.)

NOT FOR PUBLICATION

Case No. F-2015-830

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA
DEC 15 2016
MICHAEL S. RICHIE
CLERK

SUMMARY OPINION

JOHNSON, JUDGE:

Appellant Miguel Angel Chavira was tried by jury and convicted of First Degree Felony Murder (Count 1) in violation of 21 O.S.2011, § 701.7(B) and Robbery with a Firearm (Count 2), in violation of 21 O.S.2011, § 801, in the District Court of Tulsa County, Case No. CF-2011-4312. The jury assessed punishment at life imprisonment on Count 1 and twenty years imprisonment on Count 2. At the sentencing proceeding held on September 10, 2015, the Honorable Doug Drummond, who presided at trial, found that the robbery count merged with the felony murder count and imposed a sentence of life imprisonment.¹ Chavira appeals raising the following issues:

- (1) whether the trial court committed reversible error by denying his motion to dismiss for lack of venue;
- (2) whether his constitutional rights to due process and protection against unreasonable searches and seizures were violated by the State's failure to follow proper search warrant procedures;

¹ Under 21 O.S.2011, § 13.1, Chavira must serve 85% of the sentence imposed before he is eligible for parole.

- (3) whether the admission of evidence obtained from the search of the cellphone violated his right to be free from unreasonable searches and seizures; and
- (4) whether the cumulative effect of all the errors deprived him of a fair trial.

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

1.

Chavira argues on appeal, as he did below, that venue was not proper in Tulsa County because the evidence showed that Counts was killed in Rogers County. "The State bears the burden to prove venue and the standard of proof is by the preponderance of the evidence." *State v. Fletcher*, 2006 OK CR 11, ¶ 10, 133 P.3d 339, 341. Chavira was charged with first degree felony murder. The underlying felony for the murder charge was robbery with a firearm. The State had to prove every element of the underlying felony to convict Chavira for felony murder. To try Chavira in Tulsa, the State had to show by a preponderance of evidence that Chavira committed at least part of the acts constituting the charged crime in Tulsa County and the robbery, which is part of the first degree murder charge, cannot be considered separately. While there was no conclusive evidence showing where Counts was actually killed, the State showed, by a preponderance of the evidence, that at least portions of the robbery occurred in Tulsa County. Under 22 O.S.2011, § 124, venue was proper in Tulsa County and the trial court did not err in denying Chavira's motions to dismiss for lack of venue. This claim is denied.

Six search warrants were obtained and executed during the course of the investigation in this case. Chavira states in his brief that none of these six warrants or their associated affidavits and returns were filed in the district court until after his direct appeal was initiated and this omission, he asserts, was equivalent to the unauthorized sealing of search warrants and affidavits. He complains that this failure denied him his Constitutional rights to due process and the protection against unreasonable searches and seizures. Chavira's argument, not raised below, will be reviewed for plain error. See *Marshall v. State*, 2010 OK CR 8, ¶ 47, 232 P.3d 467, 478.

When a search warrant has been executed, Title 22 O.S.2011, § 1224.2 requires the district attorney file the search warrant, affidavit for search warrant, and return of search warrant with the clerk of the district court where the criminal prosecution is filed. Chavira's complaint that the initial failure of the district attorney to file these documents in the district court file can be likened to filing the documents under seal is unpersuasive. Chavira did not complain about lack of access to these documents below and when he requested them for purposes of appeal the documents were provided to him. The district attorney should have filed the documents in compliance with the mandates of section 1224.2 but the failure to do so in a timely fashion did not deprive Chavira of his Constitutional rights and did not amount to plain error.

3.

The search warrant affidavit provided ample probable cause for the issuance of the search warrant for Chavira's cell phone. While the range of information sought was broad, given the nature of the investigation the warrant did not extend the search of the phone beyond its authorized purpose. Chavira was not denied his constitutional rights and there was no plain error here. *See Seabolt v. State*, 2006 OK CR 50, ¶ 4, 152 P.3d 235, 237.

4.

There are no errors, considered individually or cumulatively, that merit relief in this case. *See Jones v. State*, 2009 OK CR 1, ¶ 104, 201 P.3d 869, 894; *DeRosa v. State*, 2004 OK CR 19, ¶ 100, 89 P.3d 1124, 1157. This claim 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. (2016), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY
THE HONORABLE DOUG DRUMMOND, 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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