

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

RODNEY DALE JUSTUS,)
)
 Appellant,)
)
 v.)
)
 THE STATE OF OKLAHOMA,)
)
 Appellee.)

NOT FOR PUBLICATION
Case No. F-2016-87

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA
MAR 1 2017
MICHAEL S. RICHIE
CLERK

SUMMARY OPINION

JOHNSON, JUDGE:

Appellant Rodney Dale Justus was tried by jury and convicted of two counts of First Degree Manslaughter (Counts 1 and 2), in violation of 21 O.S.2011, § 711; Possession of Controlled Dangerous Substance (marijuana) (Count 3) in violation of 63 O.S.Supp.2012, § 2-402; and Driving Left of Center (Count 4), in violation of 47 O.S.2011, § 11-306, in the District Court of Pawnee County, Case No. CF-2014-31. The jury assessed punishment at twenty-five years imprisonment and a \$5,000.00 fine on Count 1; twenty-five years imprisonment and a \$5,000.00 fine on Count 2; one year imprisonment and a \$500.00 fine on Count 3; and ten days imprisonment and a \$100.00 fine on Count 4. The Honorable Jefferson D. Sellers, District Judge, sentenced accordingly and ordered that the sentences on Counts 1 and 2 be served consecutively, with all other sentences to run concurrently.¹ Justus appeals, raising the following issues:

¹ Under 21 O.S.2011, § 13.1, Justus must serve 85% of the sentences imposed on Counts 1 and 2 before he is eligible for parole.

- (1) whether plain, structural error occurred through the service on the jury of a state correctional officer statutorily ineligible to serve on a criminal jury;
- (2) whether he received the effective assistance of counsel;
- (3) whether the evidence was sufficient to prove beyond a reasonable doubt that he committed the crime of first degree manslaughter;
- (4) whether the admission of gruesome photographs at trial deprived him of his right to a fundamentally fair trial; and
- (5) whether the evidence was sufficient to prove beyond a reasonable doubt that he committed the crime of possession of controlled dangerous substance (marijuana).

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

1.

Justus argues in his first proposition that structural error occurred when a state correctional officer, a person statutorily ineligible to serve on a criminal jury, was empaneled.² This person was not challenged by the defense either for cause or by a peremptory challenge. “It is trial counsel’s duty to examine jurors on voir dire to discover any facts affecting their qualifications to sit as jurors and then reasonably raise any objection that might exist as to any member of the panel.” *Jones v. State*, 2006 OK CR 5, ¶ 9, 128 P.3d 521, 533. Failure to do so waives all but plain error. *Id.*

Like most jurisdictions, including the United States Supreme Court, Oklahoma has long held that statutory qualifications for jury service are not

² Title 38 O.S.2011, § 28(D) provides that “Jailers or law enforcement officers, state, or federal, shall be eligible to serve on noncriminal actions only.”

fundamental or constitutional in nature. Rather, the overarching concern is whether a juror can be fair and impartial. See *Kohl v. Lehlback*, 160 U.S. 293, 301-03, 16 S.Ct. 304, 307, 40 L.Ed. 432 (1895). Further, "statutes providing for the selection of electors for jury service have never been regarded as an essential element of the right of trial by jury, and the method of selection is entirely within the control of the Legislature, provided only that the fundamental requisite of impartiality is not violated." *Brown v. State*, 14 Okla.Crim. 609, 618, 174 P. 1102 (1918). Thus, Justus's argument that the error of empaneling a statutorily ineligible juror is structural and not subject to harmless error analysis is denied. The record does not support the finding that the inclusion of the juror at issue affected Justus's substantial rights. There was no plain error and relief is not required.

2.

Justus argues defense counsel rendered constitutionally ineffective assistance at trial. This Court reviews claims of ineffective assistance of counsel *de novo*, to determine whether counsel's constitutionally deficient performance, if any, prejudiced the defense so as to deprive the defendant of a fair trial with reliable results. See *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674 (1984); *Malone v. State*, 2013 OK CR 1, ¶ 14, 293 P.3d 198, 206. Justus specifically argues defense counsel was ineffective for failing to challenge and remove a statutorily ineligible juror from the jury panel. The record does not support the finding that the inclusion of

this juror on the jury affected Justus's substantial rights. Justus has not shown a reasonable probability that the result of the proceeding would have been different if counsel had objected and removed this juror. His claim fails based on lack of prejudice.

3

After reviewing the evidence in the light most favorable to the State, we find that any rational trier of fact could find beyond a reasonable doubt that Justus was guilty of First Degree Manslaughter based on the evidence presented at trial. *See Logsdon v. State*, 2010 OK CR 7, ¶ 5, 231 P.3d 1156, 1161; *Spuehler v. State*, 1985 OK CR 132, ¶ 7, 709 P.2d 202, 203-204. The evidence was sufficient to sustain Justus's conviction.

4.

We find no abuse of discretion in the trial court's decision to admit the two photographs at issue because they were relevant and their probative value was not substantially outweighed by the danger of unfair prejudice. *See Browning v. State*, 2006 OK CR 8, ¶ 32, 134 P.3d 816, 837; 12 O.S.2001, §§ 2401-2403.

5.

After reviewing the evidence in the light most favorable to the State, we find that any rational trier of fact could find beyond a reasonable doubt that Justus was guilty of Possession of Controlled Dangerous Substance (Marijuana) based on the evidence presented at trial. *See Logsdon*, 2010 OK CR

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7, ¶ 5, 231 P.3d at 1161; *Spuehler*, 1985 OK CR 132, ¶ 7, 709 P.2d at 203-204.

The evidence was sufficient to sustain Justus's conviction.

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. (2017), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF PAWNEE COUNTY THE HONORABLE JEFFERSON D. SELLERS, DISTRICT JUDGE

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

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