IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

TYLER DILLON COOK,	)	
	)	**NOT FOR PUBLICATION**
Appellant,	)	
vs.	)	**No. F-2016-1043**
	)	
THE STATE OF OKLAHOMA,	)	
	)	
Appellee.	)	

SUMMARY OPINION

PER CURIAM:

Appellant, Tyler Dillon Cook, was convicted by a jury in Garfield County District Court, Case No. CF-2014-582, of First Degree Manslaughter (21 O.S.2011, § 711(1)). On November 3, 2016, the Honorable Tom L. Newby, Associate District Judge, sentenced him in accordance with the jury's recommendation to four years imprisonment. Appellant must serve at least 85% of this sentence before parole consideration.

Cook raises four propositions of error in support of his appeal:

PROPOSITION I. THE TRIAL COURT COMMITTED PLAIN ERROR BY ADMITTING EVIDENCE OF TESTING OF THE DEFENDANT'S BLOOD SAMPLE, WHICH WAS TAKEN IN VIOLATION OF THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

PROPOSITION II. THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY REFUSING TO SUPPRESS APPELLANT'S STATEMENTS TO TROOPER WALLACE, WHICH WERE OBTAINED IN VIOLATION OF *MIRANDA V. ARIZONA*.

PROPOSITION III. APPELLANT WAS DEPRIVED OF THE REASONABLY EFFECTIVE ASSISTANCE OF COUNSEL, GUARANTEED HIM BY THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION BECAUSE HIS TRIAL ATTORNEY FAILED TO OBJECT WITH SPECIFICITY TO THE CONSTITUTIONAL VIOLATIONS THAT PRODUCED INCRIMINATING EVIDENCE AGAINST HIM AND FAILED TO CHALLENGE TROOPER CAGLE'S OPINION TESTIMONY WITH PERTINENT RECORD EVIDENCE UNDERCUTTING THE BASIS FOR HIS OPINION.

PROPOSITION IV. THE ACCUMULATION OF ERROR IN THIS CASE DEPRIVED APPELLANT OF DUE PROCESS OF LAW IN VIOLATION OF THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE II, § 7 OF THE OKLAHOMA CONSTITUTION.

After thorough consideration of these propositions, and the entire record before us on appeal, including the original record, transcripts, and briefs of the parties, we affirm. Appellant was charged in connection with a traffic accident where his wife fell out of a vehicle he was driving and died from her injuries. The State alleged that Appellant was driving under the influence of alcohol at the time, and claimed a causal relationship between his intoxication and the accident. To that end, the State presented evidence of several sobriety tests conducted on Appellant shortly after the accident, as well as the results of a blood-alcohol concentration (BAC) test, based on a sample of Appellant's blood which was drawn a few hours after the accident.

In Proposition I, Appellant claims the trial court erred by admitting evidence of the blood test taken after his arrest. Because Appellant's pretrial objection to this evidence was not renewed at trial, we review this claim for plain error, which requires Appellant to show a plain and obvious deviation from a legal rule that affected the outcome of the proceeding. *Hogan v. State*, 2006 OK CR 19, ¶ 38, 139 P.3d 907, 923. Ordinarily, we will only correct plain error if it seriously affects the fairness, integrity, or public reputation of the proceedings. *Simpson v. State*, 1994 OK CR 40, ¶ 30, 876 P.2d 690, 701. The accident took place late at night in a remote area. It took the responding officer about a half-hour to arrive at the scene. He spent some time in preliminary accident investigation, then had to drive Appellant over a mile away to find a safe and suitable location for conducting

several field sobriety tests. After placing Appellant under arrest, returning briefly to the accident scene, and then driving Appellant to the nearest hospital, about two hours had passed since the accident. The natural and unavoidable dissipation of alcohol from the bloodstream, coupled with the particular circumstances described above, meant that further delays could have resulted in the complete loss of important evidence. The officer acted reasonably in obtaining a sample of Appellant's blood without a warrant. *Missouri v. McNeely*, 569 U.S. 141, 133 S.Ct. 1552, 1560, 185 L.Ed.2d 696 (2013); *Schmerber v. California*, 384 U.S. 757, 770-71, 86 S.Ct. 1826, 1835-36, 16 L.Ed.2d 908 (1966); *Cripps v. State*, 2016 OK CR 14, 387 P.3d 906. Proposition I is denied.

In Proposition II, Appellant claims the trial court erred by allowing the responding officer to testify about his conversation with Appellant after the accident. He claims the questioning amounted to a custodial interrogation, and as such, should have been preceded by warnings of his right to remain silent. *See Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). Because Appellant's pretrial objection to this evidence was not renewed at trial, we review this claim for plain error. *Hogan*, 2006 OK CR 19, ¶ 38, 139 P.3d at 923. General questioning of a motorist at the scene of a traffic offense or accident does not, without more, bear the attributes of a custodial interrogation. *Berkemer v. McCarty*, 468 U.S. 420, 104 S.Ct. 3138, 82 L.Ed.2d 317 (1984); *Edge v. City of Oklahoma City*, 1988 OK CR 166, ¶ 8, 760 P.2d 836, 838. The trial court did not plainly err in admitting Appellant's statements, specifically about drinking several beers earlier in the evening. Proposition II is denied.

In Proposition III, Appellant faults his trial counsel for failing to renew evidentiary objections described in Propositions I and II, and failing to challenge expert opinion that the victim fell head-first from the vehicle. To show he was denied his Sixth Amendment right to reasonably effective counsel, Appellant must show that counsel made an objectively unreasonable decision which undermines confidence in the outcome of the trial. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674 (1984); *Sanchez v. State*, 2009 OK CR 31, ¶ 98, 223 P.3d 980, 1012. As we have already concluded that the blood-test results and Appellant's statements at the scene were properly admitted, Appellant cannot show any prejudice from counsel's failure to object at trial to them. *Malone v. State*, 2013 OK CR 1, ¶ 16, 293 P.3d 198, 207. Finally, an expert in accident investigation opined that, based on the nature of her injuries, the victim was probably ejected from the moving vehicle (as opposed to intentionally jumping from it). This opinion was not, as Appellant claims, contrary to the Medical Examiner's findings.[1] We do not believe that challenging the expert's opinion would have affected the outcome of the trial. *Browning v. State*, 2006 OK CR 8, ¶¶ 16-19, 134 P.3d 816, 831-33. Proposition III is denied.

In Proposition IV, Appellant claims the cumulative effect of the evidentiary errors described above warrant relief. Because we have found no error in the

[1] In addition to the fatal head wound, the Medical Examiner noted some abrasions to the victim's extremities and back, but no broken bones. The State's expert testified that if a person intentionally jumps from a moving vehicle, he (the expert) would expect to see *certain kinds* of injuries to the extremities – defensive wounds, as it were, to the knees, elbows, and hands, received from trying to break the fall. The Medical Examiner did not describe those kinds of wounds. In fact, the Medical Examiner concurred that the victim's injuries were consistent with having been ejected involuntarily from a moving vehicle. Also, the expert's opinion was based on evidence besides the victim's injuries.

preceding propositions, there is no error to accumulate. *Sanders v. State*, 2002 OK CR 42, ¶ 17, 60 P.3d 1048, 1051. Proposition IV is therefore denied.

DECISION

The Judgment and Sentence of the District Court of Garfield County 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 the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF GARFIELD COUNTY
THE HONORABLE TOM L. NEWBY, ASSOCIATE DISTRICT JUDGE

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PER CURIAM OPINION:
LUMPKIN, P.J.: CONCUR IN RESULTS
LEWIS, V.P.J.: CONCUR IN RESULTS
HUDSON, J.: CONCUR IN RESULTS

HUDSON, J., CONCUR IN RESULTS

I concur in the results of today's decision because the record shows exigent circumstances justified the warrantless blood draw in this case. *McNeely v. Missouri*, 569 U.S. 141, 149-51, 133 S. Ct. 1552, 1559-60, 185 L. Ed. 2d 696 (2013) (evaluating totality of the circumstances in determining whether a warrantless, nonconsensual blood draw by police was justified by exigent circumstances); *Schmerber v. California*, 384 U.S. 757, 770-72, 86 S. Ct. 1826, 1835-36, 16 L. Ed. 2d 908 (1966) (same). I continue to disagree with the categorical approach to warrantless blood draws for vehicular accidents resulting in death or great bodily injury endorsed by the majority in *Cripps v. State*, 2016 OK CR 14, ¶¶ 6-9, 387 P.3d 906, 909-10. As I wrote in *Cripps*, the majority's approach to § 10-104(B) is not built to last. *Cripps*, 2016 OK CR 14, ¶¶ 1-11, 387 P.3d at 912-15 (Hudson, J., concurring in part/dissenting in part). The Supreme Court's recent decision approving warrantless breath—but not blood—tests incident to arrest for DUI suspects in *Birchfield v. North Dakota*, __U.S.__, 136 S. Ct. 2160, 195 L. Ed. 2d 560 (2016) drives this point home. *Id.*, 136 S. Ct. at 2184.

Law enforcement officers need to understand that obtaining a search warrant to conduct a forced draw blood when not faced with exigent circumstances is the only way to ensure Fourth Amendment compliance. On this point, I repeat what *McNeely* held: "In those drunk-driving investigations where police officers can reasonably obtain a warrant before a blood sample can be drawn without significantly undermining the efficacy of the search, the

Fourth Amendment mandates that they do so." *McNeely*, 569 U.S. at 152, 133 S. Ct. at 1561. In every circumstance, the first question an officer should ask is whether there is time, under the total circumstances of the case, to obtain a search warrant when a suspect's consent is unavailable. If so, the officer simply must obtain a search warrant.

I am authorized to state that Presiding Judge Gary Lumpkin joins in this writing.