

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

SUMMER FAITH TURNER,)
)
 Appellant,)
)
 v.)
)
 THE STATE OF OKLAHOMA,)
)
 Appellee.)

NOT FOR PUBLICATION

Case No. F-2016-987

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA
OCT 26 2017

SUMMARY OPINION

PER CURIAM:

Appellant Summer Faith Turner was tried by jury in the District Court of Bryan County, Case No. CF-2016-267, and found guilty of Child Abuse by Injury (Counts 1 and 2), in violation of 21 O.S.Supp.2014, § 843.5(A). The jury assessed punishment at five years imprisonment on Count 1 and a \$500.00 fine on Count 2. The Honorable Mark R. Campbell, District Judge, who presided at trial, sentenced Turner accordingly.¹

Turner appeals raising the following issues:

- (1) whether the evidence was sufficient to sustain her convictions;
- (2) whether she was improperly charged and convicted of the general crime of child abuse instead of the more specific crime of performing or offering to perform tattooing on a child under eighteen years of age in violation of 21 O.S.2011, § 11, which mandates that a specific statute take precedence over a more general statute;
- (3) whether she was denied the effective assistance of counsel; and

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

- (4) whether cumulative errors deprived her of a fair proceeding and reliable outcome.

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

1.

Evidence is sufficient to support a conviction if, when viewing the evidence and all reasonable inferences from it in the light most favorable to the State, any rational trier of fact could find the defendant guilty beyond a reasonable doubt. *Coddington v. State*, 2006 OK CR 34, ¶ 70, 142 P.3d 437, 456; *Spuehler v. State*, 1985 OK CR 132, ¶ 7, 709 P.2d 202, 203-04. This Court will not weigh conflicting evidence or second-guess the fact-finding decisions of the jury. *See Day v. State*, 2013 OK CR 8, ¶ 12, 303 P.3d 291, 298. Applying this standard in the instant case, we find that any rational trier of fact could find, beyond a reasonable doubt, that Turner committed both counts of Child Abuse based on the evidence presented at trial. *See Logsdon v. State*, 2010 OK CR 7, ¶ 5, 231 P.3d 1156, 1161; *Spuehler*, 1985 OK CR 132, ¶ 7, 709 P.2d at 203-204. Turner's convictions may stand.

2.

Turner contends in her second proposition that she should have been charged with the specific crime of performing or offering to perform piercing or tattooing on a child under 18 years (21 O.S.2011, §842.1) instead of the general crime of child abuse (21 O.S.Supp.2014, § 843.5.). Turner waived appellate review of this issue for all but plain error when she did not raise this

challenge before the district court. *See Dangerfield v. State*, 1987 OK CR 185, ¶ 3, 742 P.2d 573, 574. In order to show plain error an appellant must prove actual error, which is plain or obvious, and she must show that the error affected substantial rights affecting the outcome of the proceeding. *Hogan v. State*, 2006 OK CR 19, ¶ 38, 139 P.3d 907, 923. *See also Simpson v. State*, 1994 OK CR 40, ¶¶ 3, 11, 23, 876 P.2d 690, 694, 695, 698. This Court will not grant relief unless the error seriously affected the fairness, integrity or public reputation of the judicial proceeding or otherwise represents a "miscarriage of justice." *Hogan*, 2006 OK CR 19, ¶ 38, 139 P.3d at 923.

This Court reviews matters of statutory interpretation *de novo*. *State v. Tran*, 2007 OK CR 39, ¶ 7, 172 P.3d 199, 200. It is true that "where a defendant's conduct is arguably covered by more than one criminal provision, the choice is a matter within the prosecutor's discretion, bounded by the constitutional requirement that the decision not be based on impermissible standards, such as race or religion." *State v. Haworth*, 2012 OK CR 12, ¶ 13, 283 P.3d 311, 316. It is also true, however, that specific statutes should be charged over general statutes in situations where charging under the general statute would thwart the legislative intent in enacting the more specific statute. *See Franks v. State*, 2006 OK CR 31, ¶ 6, 140 P.3d 557, 558-59. *See also Lozoya v. State*, 1996 OK CR 55, ¶¶ 17-18, 932 P.2d 22, 28-29. In interpreting statutory provisions, we look first at the plain meaning of the statutory language. *State v. Farthing*, 2014 OK CR 4, ¶ 5, 328 P.3d 1208, 1210. We must

construe a statute according to “the fair import of its words taken in their usual sense, in connection with the context, and with reference to the purpose of the provision.” *State v. Anderson*, 1998 OK CR 67, ¶ 3, 972 P.2d 32, 33. We construe statutes to determine the intent of the legislature, reconciling provisions, rendering them consistent and giving intelligent effect to each. *King v. State*, 2008 OK CR 13, ¶ 7, 182 P.3d 842, 844. “To determine legislative intent we may look to each part of the statute, similar statutes, the evils to be remedied, and the consequences of any particular interpretation.” *Id.* In *State v. Love*, 2004 OK CR 11, ¶ 4 n. 5, 85 P.3d 849, 850 n. 5, we noted that legislative intent controls statutory interpretation and quoted with approval from *Keating v. Edmondson*, 2001 OK 110, 37 P.3d 882, 886, “[i]ntent is ascertained from the whole act in light of its general purpose and objective considering relevant provisions together to give full force and effect to each.” *Id.*

The statutes at issue prohibit two separate and distinct types of conduct. While section 842.1 addresses piercing or tattooing a child under the age of eighteen and people impaired by drugs and alcohol, the statutory language clearly makes it unlawful to tattoo these categories of people both because of public safety concerns and because of the permanency of tattoos. The implication is that minors under the age of eighteen and people impaired by drugs or alcohol are incapable of consent and of understanding tattooing procedures and aftercare suggestions. Conversely, section 843.5 addresses and seeks to punish people who willfully or maliciously engage in child abuse.

Turner was not prosecuted simply for the act of tattooing or allowing her children to be tattooed. Rather, she was prosecuted for the willful act of subjecting her children to the painful procedure which resulted in permanent marks on their bodies. In light of the distinct and separate purposes of these statutes, the prosecutor cannot be found to have thwarted legislative intent by charging Turner with child abuse rather than with unlawful tattooing. There was no error, plain or otherwise, in the prosecutor's decision to charge Turner with child abuse rather than the prohibited act of tattooing a child under the age of eighteen. Relief is not required.

3.

Turner argues defense counsel rendered constitutionally ineffective assistance at trial. This Court reviews claims of ineffective assistance of counsel 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. *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.

Turner complains she was deprived of her constitutional right to the effective assistance of counsel because defense counsel failed to argue at the trial level that she should be prosecuted under the specific statute prohibiting the tattooing of persons under the age of eighteen rather than the general child abuse statute. Defense counsel cannot be found to have rendered

constitutionally ineffective assistance for failing to make this argument at trial because, as noted above, in light of the distinct and separate purposes of these statutes, the prosecutor did not thwart legislative intent by charging Turner with child abuse rather than with unlawful tattooing. Turner was not improperly charged and defense counsel did not render deficient performance by failing to argue otherwise at trial. *Cf. Pavatt v. State*, 2007 OK CR 19, ¶ 66, 159 P.3d 272, 292 (defense counsel cannot be ineffective for failing to object to unobjectionable argument).

4.

There are no errors, considered individually or cumulatively, that merit relief in this case. *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. (2017), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

**AN APPEAL FROM THE DISTRICT COURT OF BRYAN COUNTY
THE HONORABLE MARK R. CAMPBELL, DISTRICT JUDGE**

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OPINION BY: PER CURIAM
LUMPKIN, P.J.: Concur
LEWIS, V.P.J.: Concur
HUDSON, J.: Concur

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