

**IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA**

ROBERT CHARLES BATES,

Appellant,

v.

THE STATE OF OKLAHOMA,

Appellee.

**NOT FOR PUBLICATION**

Case No. F 2016-476

**FILED**  
**IN COURT OF CRIMINAL APPEALS**  
**STATE OF OKLAHOMA**

**FEB 15 2018**

**SUMMARY OPINION**

**LEWIS, VICE PRESIDING JUDGE:**

Robert Charles Bates, Appellant, was tried and convicted by jury of second degree manslaughter in violation of 21 O.S.2011, § 716 in Tulsa County District Court case number CF-2015-1817, before the Honorable William J. Musseman, District Judge. The jury set punishment at four (4) years imprisonment, and Judge Musseman sentenced accordingly.

Appellant has perfected his appeal to this Court raising the following propositions of error.

1. The State presented no evidence to establish the requisite standard of care of a peace officer engaged in a drug task force operation, nor did it present any evidence of a breach of the required standard, and the trial court erred in not sustaining a demur or granting a directed verdict to the defense.
2. The trial court failed to properly instruct the jury on the requisite standard of care and the legal criteria to be considered for negligence of a peace officer engaged in a drug task force operation.
3. The State presented insufficient evidence and wholly failed in its burden to defeat Mr. Bates' affirmative defense of accident or misfortune.

4. The district court erred in refusing to give jury instructions on defense of others and use of force by a peace officer, based upon its misinterpretation of the law, which focuses on the objective reasonableness of an act or omission not the subject intent of the defendant.
5. The trial court improperly allowed highly prejudicial profanity of third-party deputies after Eric Harris was shot to be heard by the jury repeatedly.

After thorough consideration of Appellant's propositions of error and the entire record before us on appeal, including the original record, transcripts, exhibits and briefs, we have determined that the judgment and sentence of the district court shall be affirmed.

In reaching our decision, we find, in proposition one, that in reviewing sufficiency claims, this Court examines the evidence in a light most favorable to the State and determines whether there was sufficient evidence for any rational trier of fact to find the essential elements of the offense beyond a reasonable doubt. *Easlick v. State*, 2004 OK CR 21, ¶ 15, 90 P.3d 556, 559; *Spuehler v. State*, 1985 OK CR 132, ¶ 7, 709 P.2d 202, 203-04. This Court reviews "the direct and circumstantial evidence, crediting all inferences that could have been drawn in the State's favor, to determine if any rational trier of fact could have found the essential elements of the charged crime beyond a reasonable doubt." *Davis v. State*, 2004 OK CR 36, ¶ 22, 103 P.3d 70, 78.

Appellant agrees that the elements of second-degree manslaughter are:

1. Death of a human;
2. The death was unlawful;
3. The death was caused by the culpable negligence of the defendant.

Appellant argues, however, that the definition of culpable negligence should be different for police officers, and he urges this Court to review the sufficiency of evidence under that specialized definition. This Court declines to carve special definitions of culpable negligence for different professions.

‘[C]ulpable negligence’ refers to the omission to do something which a reasonably careful person would do, or the lack of the usual ordinary care and caution in the performance of an act usually and ordinarily exercised by a person under similar circumstances and conditions.

OUI Cr (2d) 4-104 (1997); *Crossett v. State*, 1952 OK CR 166, 96 Okl. Cr. 209, 217, 252 P.2d 150, 159 (1952), *see Harless v. State*, 1988 OK CR 155, ¶¶ 4-5, 759 P.2d 225, 227; *Ball v. State*, 2007 OK CR 42, ¶¶ 34-35, 173 P.3d 81, 91; *see also Kent v State*, 1912 OK CR 396, 126 P. 1040, 8 Okl.Cr. 188. This definition encompasses any person who is similarly situated, including their professional status, training, experience, etc. There is no need to carve out a different definition.

The evidence was sufficient to convict Appellant of second-degree manslaughter. Proposition one is denied.

In proposition two, we find that Appellant starts with the premise that peace officers should be judged under a different standard and instructions on that specialized standard should have been given by the trial court. A trial court's decision in giving requested jury instructions are reviewed on appeal for an abuse of discretion. *Soriano v. State*, 2011 OK CR 9, ¶ 10, 248 P.3d 381, 387.

Here, the trial court gave the uniform instructions on culpable negligence and instructed that culpable negligence is "something more than the slight negligence necessary to support a civil action for damages. It means, disregard of the consequences which may ensue from the act, and indifference to the rights of others." See *Freeman v. State*, 1940 OK CR 44, 69 Okl.Cr. 164, 101 P.2d 653, 663; also see *Nail v State*, 1925 OK CR 604, 242 P. 270, 33 Okl.Cr. 100. As this Court declines to adopt the specialized instructions, we find that the trial court did not abuse its discretion in the giving of the requested jury instructions regarding culpable negligence, and this proposition is denied.

In proposition three we agree with Appellant that the State has the burden to show that Appellant's actions were not excusable as an accident. See *Hogan v. State*, 2006 OK CR 19, ¶ 41, 139 P.3d 907, 923-24. Appellant argues that his motion for a directed verdict should have been granted by the trial court. We note, however, that a directed verdict should be denied where there is evidence from which the jury could find a criminal defendant guilty as charged. *Hayden v. State*, 1986 OK CR 10, ¶ 12, 713 P.2d 595, 597. As stated in proposition one, there was sufficient evidence for the jury to find Appellant guilty of the crime charged. The trial court, therefore, did not abuse its discretion in refusing to grant a directed verdict.

Moreover, at the conclusion of the evidence, the jury was correctly instructed on the defense of excusable homicide and the burdens on the parties. The weight and consideration to be given to the evidence is within the exclusive province of the trier of fact. *Davis v. State*, 2011 OK CR 29, ¶ 83, 268

P.3d 86, 112-13. The trier of fact may believe a single witness and disbelieve several others testifying to the contrary. *Id.* See also *Applegate v. State*, 1995 OK CR 49, ¶ 17, 904 P.2d 130, 136.

We find sufficient evidence to show the homicide committed by Appellant was not excusable; therefore, proposition three is denied.

In proposition four, we find that Appellant requested instructions on reasonable force in aid of another, OUJI-CR 2d 8-3, but Appellant did not request instructions on use of force by a police officer, 21 O.S.2011, § 732, and justifiable homicide in the defense of others, OUJI-CR 2d, 8-2. It is these later two instructions Appellant complains were not given in this case. Because he did not request these specific instructions, we review for plain error only. *Watts v State*, 2008 OK CR 27, ¶ 9, 194 P.3d 133, 136-37.

To be entitled to relief under the plain error doctrine, an appellant must prove, first, that actual error occurred, second, which is obvious in the record, and, third, the error affected his substantial rights, meaning the error affected the outcome of the proceeding; moreover, 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." See *Hogan v. State*, 2006 OK CR 19, ¶ 38, 139 P.3d 907, 923. Here, there is no plain or obvious error.

There was no evidence that any reasonable person would have reasonably and objectively believed that person would be justified in using deadly force in the situation that confronted Bates on that day. Although

officers testified that a felony arrest is a dangerous situation and a suspect wrestling with an officer could grab the officer's weapon, there was no objective need for deadly force at the time Eric Harris was shot. Proposition four is, therefore, denied.

We find, in proposition five, that Appellant sought to redact the recording of the arrest with a pre-trial motion in limine, but he failed to offer contemporaneous objections when the recording was both introduced into evidence and played for the jury. The failure to do so limits this Court's review to review for plain error only. *See Hancock v. State*, 2007 OK CR 9, ¶ 72, 155 P.3d 796, 813.

This recording was relevant and its introduction did not rise to the level of plain error in that the error is not plain on the record and, even if some error occurred, the slight error did not affect the outcome of the proceeding. No plain error occurred. Proposition four is denied.

### **DECISION**

The Judgment and Sentence of the district court is **AFFIRMED**. We further find that Appellant's motion for oral argument is **DENIED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2018), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY  
HONORABLE WILLIAM J. MUSSEMAN, DISTRICT JUDGE

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**OPINION BY: LEWIS, V.P.J.**

**LUMPKIN, P.J.: Concur**  
**HUDSON, J.: Concur**  
**KUEHN, J.: Recuse**  
**ROWLAND, J.: Recuse**