

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

KENDALL DEWAYNE CARR,)
)
 Appellant,) NOT FOR PUBLICATION
)
 v.) Case No. F-2006-1208
)
 THE STATE OF OKLAHOMA,)
)
 Appellee.)

FILED
SEP 13 2006
MICHAEL R. RICHIE
CLERK

SUMMARY OPINION

A. JOHNSON, JUDGE:

Appellant Kendall Dewayne Carr was tried by jury and convicted in the District Court of Cleveland County, Case No. CF-2004-1622, of Rape in the First Degree, After Former Conviction of Two or More Felonies, in violation of 21 O.S.2001, § 1114(A)(3). The jury fixed punishment at life imprisonment. The Honorable Lori M. Walkley, who presided at trial, sentenced Carr accordingly and ordered the sentence served consecutively to the sentence imposed in Cleveland County Case No. CF-2004-499 (Count II).

On appeal Carr first claims he was denied due process when the Court denied his challenge for cause during voir dire forcing him to use one of his limited peremptory challenges to remove a biased veniremember and ultimately forcing him to keep an unsuitable juror. We agree and find this case must be reversed and remanded for a new trial. Our decision eliminates the need to address the other issues raised.¹

¹ The remaining issues are:

The veniremember in question was a police officer who, during voir dire, said he would give more credence to the testimony of a fellow officer than to the testimony of another witness. This frank admission should have raised some doubt about this police officer's ability to fairly consider the testimony of all witnesses in this case. All doubts about juror impartiality must be resolved in favor of the accused. *Warner v. State*, 2001 OK CR 11, ¶ 6, 29 P.3d 569, 572. The record supports Carr's claim that the prospective juror was biased in favor of witnesses who are police officers. We find the trial court abused its discretion in refusing defense counsel's request to remove the prospective juror for cause.

DECISION

The Judgment and Sentence of the District Court is **REVERSED**. The matter is **REMANDED** to the district court for a new trial. Under Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2008),

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2. Whether there was a *Batson* violation when the prosecutor used peremptory challenges to remove two potential jurors.
 3. Whether certain jurors were prejudiced by encountering the victim crying in the bathroom and then discussing that episode.
 4. Whether the trial court erred in disallowing evidence under the residual hearsay exception.
 5. Whether the evidence was sufficient to sustain the conviction.
 6. Whether the reading of the deadlocked jury instruction and the long and late-night deliberation coerced the jury to render an unreliable guilty verdict.
 7. Whether his sentence is excessive.
 8. Whether cumulative error deprived him of a fair trial and reliable verdict.

the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF CLEVELAND COUNTY
THE HONORABLE LORI M. WALKLEY, DISTRICT JUDGE

APPEARANCES AT TRIAL

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ATTORNEY FOR DEFENDANT

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OPINION BY: A. JOHNSON, J.
LUMPKIN, P.J.: Concur in Results
C. JOHNSON, V.P.J.: Specially Concur
CHAPEL, J.: Concur
LEWIS, J.: Concur

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APPEARANCES ON APPEAL

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C. JOHNSON, VICE PRESIDING JUDGE, SPECIALLY CONCURRING:

I agree with the majority holding in this case that the trial court abused its discretion in denying Carr's for cause challenge to the police officer venire member who expressed partiality toward the testimony of fellow police officers. The police officer's admitted bias is neither surprising nor unforeseeable. The seating of all police officers on juries in criminal cases has not previously been statutorily prohibited as 38 O.S.Supp.2005, § 28(C)(4), currently disqualifies only those law enforcement officers having custody of prisoners. However, this past session the Legislature amended section 28 to provide that "[j]ailers or law enforcement officers, state or federal, shall be eligible to serve on noncriminal actions only." See SB 74, 51 Leg., 2008 2d Reg. Sess. This amendment goes into effect November 1, 2008, and will eliminate future questions concerning like issues of juror bias.