

ORIGINAL

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA
APR 29 2005

MICHAEL S. RICHIE
CLERK

JAMES CURTIS SATTERLEE,)
)
Appellant,)
v.)
STATE OF OKLAHOMA)
)
Appellee.)

NOT FOR PUBLICATION

Case No. F-2004-16

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IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA
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SUMMARY OPINION

LUMPKIN, VICE-PRESIDING JUDGE:

Appellant James Curtis Satterlee was tried by jury and found guilty of First Degree Rape (Count I) (21 O.S.2001, §§ 1111 & 1114), Forcible Sodomy (Counts II, III and IV) (21 O.S. 2001, § 888), Lewd Molestation (Count V) (21 O.S. 2001, § 1123(A)(5)); and Rape by Instrumentation (Count VI) (21 O.S. 2001, § 1111.1), Case No. CF-2002-315, in the District Court of Carter County. The jury recommended as punishment twenty (20) years imprisonment in each count. The trial court sentenced accordingly, ordering the sentences to run consecutively. It is from this judgment and sentence that Appellant appeals.

Appellant raises the following propositions of error in support of his appeal:

- I. The trial court erred when it allowed the admission of completely irrelevant evidence in the form of a videotape of a consensual sex act which was admitted solely to create prejudice against Appellant.
- II. The trial court erred when it instructed the jury with respect to issues relating to the potential parole of Appellant.

- III. The allegations contained in the Information were constitutionally and statutorily insufficient.
- IV. There is insufficient reliable evidence to support the essential elements of these crimes. Thus Appellant's convictions based upon the uncorroborated testimony of T.J.S. must be reversed.
- V. The expert testimony admitted by the trial court was improper as the witness was unqualified to give an opinion in the case and testified beyond the capacity of her expertise.
- VI. Appellant's conviction was obtained in violation of his constitutional right to the effective assistance of counsel at trial. A) Petitioner received Ineffective Assistance of Counsel when his attorney failed to request an instruction on corroboration of the victim's testimony; B) Appellant's attorney failed to investigate charges, failed to adequately prepare a defense, failed to develop mitigating and character evidence and failed to obtain the testimony of expert witnesses.

After a thorough consideration of these propositions and the entire record before us on appeal including the original record, transcripts, and briefs of the parties, we have determined that neither reversal nor modification is warranted under the law and the evidence.

In Proposition I, we find the trial court did not abuse its discretion in admitting the videotape. *See Robedeaux v. State*, 866 P.2d 417, 432 (Okla.Cr.1993), *cert. denied*, 513 U.S. 833, 115 S.Ct. 110, 130 L.Ed.2d 57 (1994). The tape was relevant to the issue of Appellant's identity as the perpetrator of the sexual abuse. *See* 12 O.S.2001, § 2401. The similarities of the acts depicted on the tape and the allegations made by the victim illustrate a signature or distinctive method of operation by Appellant. *See Lott v. State* 98 P.3d 318, 335 (Okla.Cr.2004). Appellant has not met his burden of showing that the probative value of the tape was substantially outweighed by its prejudicial impact or that it

was so prejudicial that it denied him a fair trial. *See Patton v. State*, 973 P.2d 270, 293-294 (Okla.Cr.1998). *See also* 12 O.S.2001, § 2402. Further, the defense was not surprised by the evidence, and the evidence was not cumulative or misleading.

In Proposition II, this Court has generally prohibited the mention of parole to the jury because of its speculative nature and because it is a discretionary procedure exercised by the executive branch. *See Mayes v. State* 887 P.2d 1288, 1316-18 (Okla.Cr.1994). However, while not required to do so, instructing the jury pursuant to the specific provisions of 21 O.S. 2001, § 13.1 that the defendant must serve at least eighty-five percent (85%) of his sentence before being eligible to be considered for parole was not error.

Proposition III, we review the sufficiency of the felony information for plain error only, and find none. *See Conover v. State*, 933 P.2d 904, 909 (Okla.Cr.1997). The felony information stated sufficient facts to put Appellant on notice of the criminal charges against which he had to defend. *Id. citing Parker v. State*, 917 P.2d 980, 986 (Okla.Cr.1996). A specific date for the commission of the crimes did not need to be stated, as the date was not a material element of the offenses. *Robedeaux v. State*, 908 P.2d 804, 807 (Okla.Cr.1995). *See also* 22 O.S. 2001, § 405.

In Proposition IV, reviewing the evidence in the light most favorable to the State, a rational trier of fact could have found Appellant guilty beyond a reasonable doubt of the charged offenses. *See Spuehler v. State*, 709 P.2d 202 (Okla.Cr.1985).

In Proposition V, the trial court did not abuse its discretion in admitting the expert opinion testimony of Karen Stowers. *See Slaughter v. State*, 950 P.2d 839, 848-849 (Okla.Cr.1997). Her opinion that the physical examination showed the victim had been sexually abused over a long period of time was based on her knowledge, experience, training and skill and was not therefore outside her area of expertise.

In Proposition VI, we have thoroughly reviewed the record, and all of Appellant's allegations of ineffectiveness of counsel, and we have considered counsel's challenged conduct on the facts of the case as viewed at the time and have asked if the conduct was professionally unreasonable and, if so, whether the error affected the jury's judgment. *Bland v. State*, 4 P.3d 702, 732 (Okla.Cr.2000). Defense counsel's performance in this case did not "so undermine[] the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Id. quoting Strickland v. Washington*, 466 U.S. 668, 686, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674 (1984).

The victim's testimony was consistent and credible and did not require corroboration. Therefore, counsel was not ineffective in failing to request a jury instruction on corroboration. *See Phillips v. State*, 989 P.2d 1017, 1044 (Okla.Cr.1999). Further, trial counsel presented a thorough defense, offering evidence of Appellant's good character and reputation for truthfulness. Counsel thoroughly cross-examined the victim, the State's expert witness and offered evidence the crime could not have occurred as the victim claimed. We find Appellant has failed to meet his burden of showing a reasonable probability that,

but for any unprofessional errors by counsel, the result of the trial would have been different as any errors or omissions by counsel did not influence the jury's determination of guilt. Additionally, we find Appellant was not denied a fair trial by the accumulation of error. See *Conover v. State*, 933 P.2d 904, 923 (Okl.Cr.1997), *Ashinsky v. State*, 780 P.2d 201, 209 (Okl.Cr.1989).

Accordingly, this appeal is denied.

DECISION

The Judgment and Sentence is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2005), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF CARTER COUNTY
THE HONORABLE LEE A. CARD, ASSOCIATE DISTRICT JUDGE

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OPINION BY: LUMPKIN, V.P.J.

CHAPEL, P.J.: DISSENT
C. JOHNSON, J.: CONCUR
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CHAPEL, J., DISSENTING:

Satterlee committed horrible crimes against his son. There are no circumstances under which these acts could have been considered normal, consensual, or anything but criminal. The case essentially came down to the victim's word against Satterlee's. The fifteen-year-old witness in this case had told others about the abuse, run away because of it, and testified convincingly. However, in order to ensure a conviction, the prosecution wanted more.

Over Satterlee's objection the State showed the jury a videotape of Satterlee having sex with his wife. The tape, which runs almost an hour, shows Satterlee performing oral sex and engaging in anal and vaginal sex with his wife, using various sex toys and lotions anally and vaginally, and urinating on her. The tape also shows Satterlee's wife performing fellatio and inserting a toy in his anus. Towards the end of the tape, when Satterlee penetrates his wife anally, she cries out in pain and he threatens her. However, it is clear that most if not all of the conduct on the tape is between two consenting adults. Both Satterlee and his wife knew the tape was running and directed their actions toward the camera. Although this is homemade pornography, the overall effect to an impartial viewer is unpleasant, even disgusting, rather than prurient.

The trial court admitted this evidence because the unusual sexual activity it depicts, much of which mirrors the victim's story, was more probative than prejudicial. The majority agrees. In theory, this is understandable. While evidence of other crimes is generally prohibited, this Court has allowed

greater latitude in sex offense cases,¹ where the other crimes involve actions which are so distinctive that they illustrate a signature or distinctive method of operation.² There are indeed similarities between the crimes committed here and the acts performed on the tape. The victim alleged, and the tape showed, fellatio and anal sex, use of sex toys in the anus, and threats during painful anal sex.

I might agree that this evidence was properly admitted, had I not seen the tape. Having done so, I have two main objections. First, this tape overall shows sexual acts between consenting adults, not repeated rape of a child. Not only is the crime victim a child while the tape involves an adult woman, there is no crime victim on the tape. Satterlee claims that, if this tape is admissible, then evidence of any consensual sexual conduct may be admitted against a defendant charged with sexual offenses. He has a point. The trial court and majority specifically allude to the similarities between the acts on the tape and the crimes. However, it is likely that any defendant charged with a sexual offense will perform similar acts in both consensual and criminal settings. Sex offense defendants are not allowed to present evidence of a victim's consensual sexual activity with others. This is because the Legislature rightly concluded that a victim's consent to sex in another context has no bearing on whether he

¹ *Myers v. State*, 2000 OK CR 25, 17 P.3d 1021, 1030, *cert. denied*, 534 U.S. 900, 122 S.Ct. 228, 151 L.Ed.2d 163 (2001). I disagreed with the adoption of the "greater latitude" exception in *Myers*, where previous sexual encounters with minors were admitted as other crimes evidence where Myers was charged with raping an adult woman. This case presents a similar situation.

² See, e.g., *Huskey v. State*, 1998 OK CR 3, 989 P.2d 1, 3; *Bales v. State*, 1992 OK CR 24, 829 P.2d 998, 1000; *Wells v. State*, 1990 OK CR 72, 799 P.2d 1128, 1130; *Eberhart v. State*, 1986 OK CR 160, 727 P.2d 1374, 1379-80.

or she has been raped in a particular case.³ The same reasoning would seem to apply here. What type of sexual acts a defendant prefers in legal consensual sexual activity with an adult is tangential at best to whether he has raped a particular child victim. I agree with our exception allowing evidence of other criminal sexual activity which may constitute a signature or distinctive method of operation, but I do not agree with extending that exception to consensual activity with adults, where the victim of the crime is a child.⁴

My second objection to the tape is its prejudicial effect. The majority concludes that Satterlee was not prejudiced because he was not surprised by the tape and it was neither cumulative nor misleading. I agree that the tape was not cumulative. Nobody else testified about the details of Satterlee's consensual sexual relations with his wife because that has nothing to do with whether or not he raped his son. For that very reason, I think the tape was misleading. Finally, whether or not Satterlee knew the tape would be introduced is not the question. The tape shows a variety of sexual activity, much of it unusual or unpleasant, in long and tedious detail. Physically and emotionally Satterlee is reflected in an unflattering light. He is selfish, abusive, domineering, and threatening during the long course of what he clearly thinks of as an affectionate encounter. The accumulation of activity on the tape is eventually numbing and disgusting. Particularly since the tape had very little relevance to the issues at trial, I must conclude that it improperly prejudiced

³ 12 O.S.2001, § 2412.

⁴ See *Myers*, 17 P.3d at 1040 (Chapel, J., concurring in result).

the jury against Satterlee. Satterlee deserves a trial with a jury unaffected by this evidence. I would reverse.