



**WILLIAMS v. STATE**

2021 OK CR 19

Case Number: F-2019-131

Decided: 07/15/2021

**ERIC RAYMAN WILLIAMS, Appellant v. STATE OF OKLAHOMA, Appellee.**



Cite as: 2021 OK CR 19, \_\_ \_\_

**SUMMARY OPINION**

**HUDSON, JUDGE:**

¶1 Appellant, Eric Rayman Williams, was tried and convicted by a jury in the District Court of Oklahoma County, Case No. CF-2016-8211, of two counts of Indecent or Lewd Acts With a Child Under Sixteen, in violation of 21 O.S.Supp.2013 & 2015, § 1123. The jury recommended sentences of thirty-five years imprisonment on Count 1 and thirty years imprisonment on Count 2. The Honorable Ray C. Elliott, District Judge, sentenced Williams in accordance with the jury's verdicts and ordered the sentences to run concurrently. Judge Elliott also ordered credit for time served. Appellant must serve 85% of his sentences before becoming eligible for parole. 21 O.S.Supp.2015, § 13.1.

¶2 Williams now appeals, alleging the following propositions of error on appeal:

- I. THE TRIAL COURT ERRED WHEN IT DID NOT INSTRUCT THE JURY ON NECESSARY ELEMENTS;
- II. THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT ALLOWED THE ADMISSION OF PROPENSITY EVIDENCE;
- III. PROSECUTORIAL MISCONDUCT DEPRIVED APPELLANT OF A FAIR TRIAL;
- IV. APPELLANT'S CONVICTION FOR COUNT 2 MUST BE REVERSED BECAUSE THE CRIME CHARGED WAS NOT COMMITTED; and
- V. THE CUMULATIVE EFFECT OF ALL THESE ERRORS DEPRIVED APPELLANT OF A FAIR AND IMPARTIAL PROCEEDING.

¶3 After thorough consideration of the entire record before us on appeal, including the original record, transcripts, exhibits and the parties' briefs, we find that no relief is required under the law and evidence. Appellant's judgment and sentence is **AFFIRMED**.

¶4 **Proposition I.** Appellant's complaint that the jury was not required to find beyond a reasonable doubt that the victim was under the age of 12 was not raised below. Instead, Appellant objected to the instructions on different grounds. Our review is therefore limited to plain error. *Black v. State*, 2001 OK CR 5, ¶ 56, 21 P.3d 1047, 1068. See also *Romano v. State*, 1995 OK CR 74, ¶ 18, 909 P.2d 92, 109 ("Where a defendant makes a specific objection at trial no different objections will be considered on appeal."). To show plain error, Appellant must show an actual error, which is plain or obvious, affected his substantial rights. "This Court will only correct plain error if the error seriously affects the fairness, integrity or public reputation of the judicial proceedings or otherwise represents a miscarriage of justice." *Lamar v. State*, 2018 OK CR 8, ¶ 40, 419 P.3d 283, 294; 20 O.S.2011, § 3001.1.

¶5 Appellant demonstrates actual or obvious error affecting his substantial rights with this claim. The jury should have been instructed that in order to assess punishment starting at not less than twenty-five years imprisonment, they had to find beyond a reasonable doubt that the victim was under twelve years of age when the crimes were committed. *Chadwell v. State*, 2019 OK CR 14, ¶¶ 5-7, 446 P.3d 1244, 1246-47. The error nonetheless was harmless beyond a reasonable doubt. The evidence at trial was overwhelming and not contradicted that the victim was under the age of 12 at the time of the abuse. The jury verdicts would have been the same absent the error. See *Neder v. United States*, 527 U.S. 1, 17 (1999); *Chadwell*, 2019 OK CR 14, ¶ 8, 446 P.3d at 1247. Proposition I is denied.

¶6 **Proposition II.** The trial court did not abuse its discretion in admitting the child sexual propensity evidence. See *Neloms v. State*, 2012 OK CR 7, ¶ 25, 274 P.3d 161, 167 ("This Court reviews a trial court's evidentiary rulings for an abuse of discretion."). "An abuse of discretion is a conclusion or judgment that is clearly against the logic and effect of the facts presented." *Moore v. State*, 2019 OK CR 12, ¶ 14, 443 P.3d 579, 583. The child sexual propensity evidence met all of the factors required for admissibility under 12 O.S.2011, § 2414. The probative value of this evidence was not substantially outweighed by the danger of unfair prejudice, confusion of the issues or misleading the jury. See *Johnson v. State*, 2010 OK CR 28, ¶ 6, 250 P.3d 901, 903-904; *Horn v. State*, 2009 OK CR 7, ¶¶ 40-41, 204 P.3d 777, 786-87 (both restating standard for admissibility); 12 O.S.2011, §§ 2401-2403.

¶7 The jury was instructed with OUJI-CR (2d) 9-10A immediately after E.W.'s testimony and again in the written charge. We presume the jurors followed this limiting instruction. *Head v. State*, 2006 OK CR 44, ¶ 26, 146 P.3d 1141, 1148. The record shows the jury was explicitly advised of the role of the child sexual propensity evidence relating to E.W.'s testimony through the instructions and there was nothing confusing about this evidence. Appellant fails to show an abuse of discretion from the trial court's balancing of the evidence in this case. Proposition II is denied.

¶8 **Proposition III.** We do not grant relief for prosecutorial misconduct "unless, when viewed in the context of the entire trial, the misconduct rendered the trial fundamentally unfair such that the jury's verdict is unreliable." *Mahdavi v. State*, 2020 OK CR 12, ¶ 42, 478 P.3d 449, 459 (citing *Darden v. Wainwright*, 477 U.S. 168, 181 (1986)). The challenged portions of the State's closing argument--none of which drew objections below--amounted to reasonable comment on the record evidence, not prosecutorial misconduct. The prosecutor's misstatement that witness Matt Williams had previously viewed Appellant as "Batman" was an inadvertent, and rather meaningless, passing comment--not prosecutorial misconduct implicating Appellant's right to a fundamentally fair trial. Appellant fails to show error, plain or otherwise with any of his complaints. *Id.*, 2020 OK CR 12, ¶ 42, 478 P.3d at 460. Proposition III is denied.

¶9 **Proposition IV.** Appellant's challenge to the trial court's elemental definition of Count 2 in the written charge was not raised below and is limited to plain error review. See *Black*, 2001 OK CR 5, ¶ 56, 21 P.3d at 1068. "The preliminary question on plain error review is whether error, an actual violation of law, has plainly or obviously occurred." *Martinez v. State*, 2016 OK CR 3, ¶ 18, 371 P.3d 1100, 1108. The plain language of Title 21 O.S.Supp.2013 & 2015, § 1123(A)(5)(e) does not expressly require the actual physical presence of those performing the sex act to be in the same location as the child victim. In light of the absence of any controlling precedent on this issue, the purported instructional error was not plain or obvious in the absence of an objection. There is no plain error. Proposition IV is denied.

¶10 **Proposition V.** We deny relief for alleged cumulative error. Appellant has not proven the existence of two or more errors in this appeal that we can cumulate. See *Mahdavi*, 2020 OK CR 12, ¶ 49, 478 P.3d at 461. Proposition V is denied.

#### DECISION

¶11 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. (2021), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

**AN APPEAL FROM  
THE DISTRICT COURT OF OKLAHOMA COUNTY  
THE HONORABLE RAY C. ELLIOTT, DISTRICT JUDGE**

**APPEARANCES AT TRIAL**

**APPEARANCES ON APPEAL**

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**OPINION BY: HUDSON, J.**  
**KUEHN, P.J.: CONCURS**  
**ROWLAND, V.P.J.: CONCURS**  
**LUMPKIN, J.: SPECIALLY CONCURS**  
**LEWIS, J.: CONCURS IN PART/DISSENTS IN PART**

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**LUMPKIN, JUDGE: SPECIALLY CONCURRING**

¶1 I concur in the Court's decision to affirm the Judgment and Sentence in this case. However, I write separately to address Proposition IV and the language of 21 O.S.Supp.2015, § 1123(A)(5)(e). This section makes it a felony for "any person to knowingly and intentionally", "[i]n a lewd or lascivious manner and for the purpose of sexual gratification" "cause, expose, force or require a child to look upon sexual acts performed in the presence of the child." The intent of this language is to make it illegal to "cause, expose, force or require" a child to view sexual activity performed in their presence. The facts in the present case show that while Appellant's seven-year-old granddaughter sat on his lap, he forced her to watch shows on the television showing naked men and women engaging in sexual activity. When his granddaughter tried to shut her eyes and not watch the images, Appellant told her it was all right for her to watch it. Appellant's conduct of forcing his granddaughter to watch the sexual activity is exactly the kind of conduct prohibited by Section 1123(A)(5)(e). Whether the sexual activity was performed live in front of the child or recorded and shown to the child at a later date is not the focus of the statute.

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**LEWIS, JUDGE, CONCURRING IN PART AND DISSENTING IN PART:**

¶1 I concur in affirming Count One, but dissent to affirming Count Two. In affirming Count Two, the Majority relies on plain error review to ignore our previous unpublished case on the issue. Appellant attached the case, *Harris v. State*, F-2007-0381 (Okla.Cr. May 15, 2008), to his brief in compliance with Rule 3.5(C), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2021). While *Harris* is not binding authority, it is highly persuasive on the issue and there are no published cases which serve as well the purpose for which counsel cites it.<sup>1</sup>

¶2 There is no disputing that Appellant's actions were vile, and lewd acts with a child proscribed in section 1123 can be accomplished in many ways. The legislature, however, was specific in its division of the statute to specify that section 1123(A)(5)(e), as charged in Count Two here, requires causing, exposing, forcing or requiring "a child to look upon sexual acts performed in the presence of the child." That element did not occur in this case. Appellant should have been charged under section 1123(A)(5)(d), which prohibits the forcing of a child "to view any obscene materials, child pornography or materials deemed harmful to minors as such terms are defined by Sections 1024.1 and 1040.75 of this title."

¶3 Because Appellant was not charged with, and the jury was not instructed on, the correct crime, I dissent to the affirmance of his conviction in Count Two.

**FOOTNOTES**

**LEWIS, JUDGE, CONCURRING IN PART AND DISSENTING IN PART:**

<sup>1</sup> It is noted that both the trial of this case and the unpublished case were held before the same District Judge.

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**Citationizer<sup>®</sup> Summary of Documents Citing This Document**

**Cite Name Level**

None Found.

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**Citationizer: Table of Authority**

<b>Cite Name</b>	<b>Level</b>
<b>Oklahoma Court of Criminal Appeals Cases</b>	
Cite	Name Level
<u>1995 OK CR 74, 909 P.2d 92,</u>	<u>ROMANO v. STATE</u> Discussed
<u>2001 OK CR 5, 21 P.3d 1047, 72 OBJ 858,</u>	<u>BLACK v. STATE</u> Discussed at Length
<u>2006 OK CR 44, 146 P.3d 1141,</u>	<u>HEAD v. STATE</u> Discussed
<u>2009 OK CR 7, 204 P.3d 777,</u>	<u>HORN v. STATE</u> Discussed
<u>2010 OK CR 28, 250 P.3d 901,</u>	<u>JOHNSON v. STATE</u> Discussed
<u>2012 OK CR 7, 274 P.3d 161,</u>	<u>NELOMS v. STATE</u> Discussed
<u>2016 OK CR 3, 371 P.3d 1100,</u>	<u>MARTINEZ v. STATE</u> Discussed
<u>2018 OK CR 8, 419 P.3d 283,</u>	<u>LAMAR v. STATE</u> Discussed
<u>2019 OK CR 12, 443 P.3d 579,</u>	<u>MOORE v. STATE</u> Discussed
<u>2019 OK CR 14, 446 P.3d 1244,</u>	<u>CHADWELL v. STATE</u> Discussed at Length
<u>2020 OK CR 12, 478 P.3d 449,</u>	<u>MAHDAVI v. STATE</u> Discussed at Length

**Cite Name****Level****Title 12. Civil Procedure**

Cite	Name	Level
<u>12 O.S. 2414,</u>	<u>Evidence of Commission of Other Child Molestation Offense - Admissibility - Disclosures by Prosecutor</u>	Cited

**Title 20. Courts**

Cite	Name	Level
<u>20 O.S. 3001.1,</u>	<u>Setting Aside Judgment on Ground of Misdirection of Jury or Error in Pleading or Procedure</u>	Cited

**Title 21. Crimes and Punishments**

Cite	Name	Level
<u>21 O.S. 13.1,</u>	<u>Required Service of Minimum Percentage of Sentence - Offenses Specified</u>	Cited
<u>21 O.S. 1123,</u>	<u>Lewd or Indecent Proposals or Acts to Child Under 16</u>	Discussed at Length